MONTANA LEGISLATIVE HISTORY

Chapter 485 19 87

Bill H 388 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) 2/11 ✓ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on State Administration

Hearing Date(s) 3/13 ✓ C

3/14 ✓ C

3/17 ✓ C

_____ C

Did this bill originate in an interim committee? ____ Yes ✓ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED AS AMENDED	55	45
2/15	3RD READING FAILED	49	49
2/15	RECONSIDERED PREVIOUS ACTION	61	37
2/18	3RD READING PASSED	55	44
	TRANSMITTED TO SENATE		
2/19	FIRST READING		
2/19	REFERRED TO BUSINESS & INDUSTRY		
3/07	REVISED FISCAL NOTE REQUESTED		
3/11	REVISED FISCAL NOTE RECEIVED		
3/11	REVISED FISCAL NOTE PRINTED		
3/13	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED AS AMENDED	37	13
4/07	3RD READING CONCURRED	41	9
	RETURNED TO HOUSE WITH AMENDMENTS		
4/10	2ND READING AMENDMENTS CONCURRED	44	52
4/10	SEGREGATED FROM COMMITTEE OF WHOLE REPORT	55	40
4/11	2ND READING AMENDMENTS NOT CONCURRED	80	15
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/16	HEARING		
4/16	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/17	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	83	16
4/18	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	79	20
	SENATE		
4/12	FREE CONFERENCE COMMITTEE APPOINTED		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/17	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0
4/18	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	45	4
4/22	SIGNED BY SPEAKER		
4/25	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR CHAPTER NUMBER 488 EFFECTIVE DATE: 07/01/98		

HB 389 INTRODUCED BY SIMON, ET AL. *LC0533 DRAFTER: MACMASTER*

PROVIDE FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING

1/29	INTRODUCED		
1/29	FIRST READING		
1/29	REFERRED TO JUDICIARY		
1/29	FISCAL NOTE REQUESTED		
2/05	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/11	HEARING		
2/11	TABLED IN COMMITTEE		
2/21	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING		
2/25	2ND READING PASSED AS AMENDED	69	17
2/26	3RD READING PASSED	71	28
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO STATE ADMINISTRATION		
3/07	REVISED FISCAL NOTE REQUESTED		
3/13	HEARING		

3/15	REVISED FISCAL NOTE RECEIVED		
3/15	REVISED FISCAL NOTE PRINTED		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED	49	0
3/24	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
3/26	REVISED FISCAL NOTE REQUESTED		
4/04	REVISED FISCAL NOTE RECEIVED		
4/04	REVISED FISCAL NOTE PRINTED		
4/08	2ND READING AMENDMENTS NOT CONCURRED	94	4
4/08	CONFERENCE COMMITTEE APPOINTED		
4/14	HEARING		
4/14	CONFERENCE COMMITTEE DISSOLVED		
4/14	FREE CONFERENCE COMMITTEE APPOINTED		
4/16	HEARING		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	99	0
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	4
	SENATE		
4/10	CONFERENCE COMMITTEE APPOINTED		
4/14	CONFERENCE COMMITTEE DISSOLVED		
4/14	FREE CONFERENCE COMMITTEE APPOINTED		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	45	2
4/21	SIGNED BY SPEAKER		
4/25	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 489		
	EFFECTIVE DATE: 10/01/97		

HB 390 INTRODUCED BY COBB, ET AL. *LC0603 DRAFTER: WILLIAMS*

ALLOW VOLUNTARY POOLING OF IRRIGATION WATER RIGHTS BETWEEN OWNERS OF CONTIGUOUS TRACTS ALONG A WATER SOURCE IF A WATER COMMISSIONER HAS BEEN APPOINTED

1/29	INTRODUCED		
1/29	FIRST READING		
1/29	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/04	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	90	3
2/26	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/14	HEARING		
3/19	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HB 391 INTRODUCED BY ROSE, ET AL. *LC0244 DRAFTER: MALY*

IMPLEMENT THE ONE-STOP BUSINESS LICENSING PILOT PROJECT

1/29	INTRODUCED
1/29	FIRST READING

House BILL NO. 389 Wm.E. Boharski

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING AND OTHER AGENCY ACTIONS; AMENDING PROVISIONS FOR NOTICE OF AGENCY RULES AND ACTIONS; DEFINING TERMS; CLARIFYING EXISTING PROVISIONS; STRENGTHENING THE REQUIREMENTS FOR AN EMERGENCY RULE; PROHIBITING THE USE OF AN ADOPTION NOTICE TO CURE DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY; AND AMENDING SECTIONS 2-3-101, 2-3-102, 2-3-103, 2-3-104, 2-3-105, 2-3-112, 2-3-114, 2-3-203, 2-3-213, 2-3-221, 2-4-102, 2-4-302, 2-4-303, 2-4-305, AND 2-4-306, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-101, MCA, is amended to read:

"**2-3-101. Legislative intent.** The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency and that this part must be liberally construed to achieve that purpose."

Section 2. Section 2-3-102, MCA, is amended to read:

"**2-3-102. Definitions.** As used in this part, the following definitions apply:

(1) "Agency" means ~~any~~ a board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature ~~and any~~ or a branch, committee, or officer ~~thereof~~ of the legislature;

(b) the judicial ~~branches and any~~ branch or a committee or officer ~~thereof~~ of the judicial branch;

(c) the governor, except that an agency is not exempt merely because the governor has been designated as a member ~~thereof~~ of the agency; or

(d) the state military establishment and agencies concerned with civil defense and recovery from

hostile attack.

(2) "Agency action" means the whole or a part of, or the equivalent or denial of, the adoption of an agency rule, the issuance of a license or order, the award of a contract, or ~~the equivalent or denial thereof~~ an agency decision that is of significant interest to the public.

(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(4) "Significant interest to the public" means the undertaking of an agency action or decision that involves a controversial matter, a fiscal impact on a particular class or group of individuals, or significant citizen interest."

Section 3. Section 2-3-103, MCA, is amended to read:

"**2-3-103. Public participation -- governor to ~~insure~~ ensure guidelines adopted.** (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures ~~shall assure~~ must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. Each agency shall create and maintain an interested persons list. Each person submitting oral or written comments to, attending a hearing of, or in any way contacting the agency for any purpose concerning agency actions and decisions must be placed on the list by the agency and given notice of each intended or proposed agency action and each agency decision relating to matters in which the person has expressed an interest in the person's contacts with the agency.

(2) The governor shall ~~insure~~ ensure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs~~,~~. ~~which~~ The guidelines ~~shall~~ must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) ~~of this section~~. These guidelines ~~shall~~ must be adopted as rules and published in a manner ~~which~~ that may be provided to a member of the public upon request."

Section 4. Section 2-3-104, MCA, is amended to read:

"2-3-104. **Requirements for compliance with notice provisions.** An agency ~~shall be considered to have complied~~ complies with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

~~(2) a proceeding is held as required by the Montana Administrative Procedure Act;~~

~~(3)~~(2) a public hearing, after appropriate and adequate notice is given, is held pursuant to ~~any other~~ a provision of state law or a local ordinance or resolution; or

~~(4)~~(3) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried ~~a news story or advertisement~~ an advertisement giving notice of opportunity to be heard concerning the decision sufficiently prior to a final decision to permit public comment on the matter. The advertisement must be printed in at least 12-point type and must comply with the notice requirements of 2-4-302(1). If the newspaper has a Sunday edition, the advertisement must be in that edition."

Section 5. Section 2-3-105, MCA, is amended to read:

"2-3-105. **Supplemental notice by radio or television.** (1) ~~Any~~ An official of the state or ~~any~~ of one of its political subdivisions who is required by law to publish ~~any~~ a notice ~~required by law~~ may, and is encouraged to, supplement ~~such~~ the publication by a radio or television broadcast, or both, of a summary of ~~such~~ the notice ~~or by both of such broadcasts when~~ if in ~~his~~ the official's judgment the public interest will be served.

(2) ~~The~~ When a summary of ~~such~~ a notice ~~shall only be read with no reference to any person by name then~~ is broadcast, a candidate for political office may not be referred to.

(3) ~~Such announcements shall be made~~ A summary may be broadcast only by ~~duly~~ employed personnel of the station from which ~~such~~ the broadcast emanates.

(4) ~~Announcements~~ An announcement by a political ~~subdivisions~~ subdivision may be made only by ~~stations~~ a station situated within the county of origin of the ~~legal~~ notice unless ~~no~~ a broadcast station ~~exists~~ does not exist in ~~such~~ that county, in which case ~~announcements~~ the announcement may be made by a station or stations situated in any county other than the county of origin of the ~~legal~~ notice."

Section 6. Section 2-3-112, MCA, is amended to read:

"**2-3-112. Exceptions.** The provisions of 2-3-103 and 2-3-111 do not apply to:

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision ~~that must be made to maintain or protect the interests of the agency, including but not limited to the filing of~~ to file a lawsuit ~~in a court of law~~ or ~~becoming~~ to become a party to an administrative proceeding; or

(3) a decision involving no more than a ministerial act."

Section 7. Section 2-3-114, MCA, is amended to read:

"**2-3-114. Enforcement.** The district courts of the state have jurisdiction to set aside or declare void an agency decision under this part upon petition ~~made within 30 days of the date of the decision of any~~ by a person whose rights have been prejudiced."

Section 8. Section 2-3-203, MCA, is amended to read:

"**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) ~~Provided, however, the~~ The presiding officer of ~~any~~ a meeting subject to subsections (1) and (2) may close the meeting during the time that the discussion relates to a matter of individual privacy ~~and then if and only~~ if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains, and, in that event, the meeting must be open.

(4) (a) ~~However, except~~ Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation involving the enforcement or preservation of a constitutional right of the people or in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) ~~Any~~ A committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business ~~which~~ that is within the jurisdiction of that agency is subject to the requirements of this section."

Section 9. Section 2-3-213, MCA, is amended to read:

"**2-3-213. Voidability.** ~~Any~~ A decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. ~~A suit to void any such decision must be commenced within 30 days of the decision.~~"

Section 10. Section 2-3-221, MCA, is amended to read:

"**2-3-221. Costs and attorney fees to plaintiff in certain actions to enforce constitutional right to know.** A plaintiff who prevails in an action brought in district court to enforce ~~his~~ the plaintiff's rights under Article II~~, section 9,~~ of the Montana constitution ~~may~~ must be awarded ~~his~~ costs and reasonable ~~attorneys'~~ attorney fees as a matter of course. A prevailing plaintiff who is not represented by an attorney must be awarded 90% of what the judge determines would be a reasonable attorney fee if the plaintiff had been represented by an attorney."

Section 11. Section 2-4-102, MCA, is amended to read:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ~~Administrative Rules of Montana~~ ARM and the ~~Montana Administrative Register~~ register;

(ii) the supervision and administration of a penal institution with regard to the institutional

supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "Agency action" means the whole or a part of, or the equivalent or denial of, the adoption of an agency rule, the issuance of a license or order, the award of a contract, or an agency decision that is of significant interest to the public.

~~(3)~~(4) "ARM" means the Administrative Rules of Montana.

~~(4)~~(5) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(6) "Interested person" means a person known to the committee or to an agency to have demonstrated in any way an interest concerning agency actions or other agency administrative matters.

~~(5)~~(7) "License" includes the whole or part of ~~any~~ an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

~~(6)~~(8) "Licensing" includes ~~any~~ an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

~~(7)~~(9) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but ~~nothing in~~ this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

~~(8)~~(10) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

~~(9)~~(11) "Register" means the Montana Administrative Register.

~~(10)~~(12) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ~~Administrative Rules of Montana~~ ARM.

(13) "Significant interest to the public", when used in reference to agency action, means agency action that involves a controversial matter, a fiscal impact on a particular class or group of individuals, or significant citizen interest.

~~(11)~~(14) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 12. Section 2-4-302, MCA, is amended to read:

"2-4-302. **Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of ~~any~~ a rule, the agency shall give written notice of its intended action. The notice ~~shall~~ must, at a minimum, include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ on the intended action. To promote the public's full comprehension of the notice, the notice must be written in plain and clear English and use familiar and understandable words and terms.

(2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to interested persons who have made timely requests to the agency ~~for notice of its rulemaking proceedings~~ to be informed of agency actions and to the office of any professional, trade, or industrial society or organization or member ~~thereof which~~ of those entities that has filed a request with the administrative code committee ~~when such request~~ that has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons. A person who submits an oral or written comment, attends a hearing, or contacts an agency by any means and for any purpose in regard to intended agency action must be informed of the list by the agency.

(b) The administrative code committee shall forward a list of all organizations or interested persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ ARM. The list must be amended by the agency upon request of any interested person requesting to be added to or deleted from the list.

(c) The notice ~~shall~~ must be published and mailed at least 30 days in advance of the agency's intended action. If the intended action is of significant interest to the public, the notice must, at a minimum, be published as required in 2-3-104(3).

(3) If ~~any~~ a statute provides for a ~~different~~ method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ in this section. However, ~~in no case may~~ the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing ~~shall~~ must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing ~~herein~~ in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of ~~any~~ a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register;

(b) explain the primary function and purpose of the administrative code committee and state how the administrative code committee may be contacted; and

(c) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list."

Section 13. Section 2-4-303, MCA, is amended to read:

"**2-4-303. Emergency or temporary rules.** (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to immediate judicial review upon petition by any person. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or

amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective."

Section 14. Section 2-4-305, MCA, is amended to read:

"**2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall fully consider ~~fully~~ written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a ~~concise~~ statement of the principal reasons for and against its adoption, comprehensively incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt

rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule adopted is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless notice of it is given and it is adopted, in ~~substantial~~ compliance with 2-4-302 or 2-4-303 and this section, and unless 2-4-306 is complied with and notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in ~~statements of reasonable necessity, in~~ citations of authority for rules~~,~~ and in citations of sections implemented by rules. An agency may use an amended proposal notice, but not the adoption notice, to correct deficiencies in a statement of reasonable necessity."

Section 15. Section 2-4-306, MCA, is amended to read:

"**2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules ~~which~~ that are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, which ~~shall~~ must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing ~~such~~ copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

(4) Each rule ~~shall become~~ becomes effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule ~~shall become~~ becomes effective ~~immediately upon filing with the secretary of state or~~ at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons ~~therefor shall~~ for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to every person who may be affected by them."

-END-

BEST COPY AVAILABLE

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0389, as introduced

ESCRIPTION OF PROPOSED LEGISLATION:
bill providing for greater public participation in agency rulemaking and other agency ctions, and amending provisions for notice of agency rules and actions.

SSUMPTIONS:
eneral Information:

. This bill requires notice of agency decisions that are of a significant interest to the public. Section 2(4) defines "significant interest to the public " as the undertaking of an agency action or decision that involves a controversial matter, a fiscal impact on a particular class or group of individuals, of significant citizen interest.
. A fiscal note response was requested from 28 state agencies in order for the OBPP to prepare the fiscal note for HB 389. Most of the smaller agencies responded with minimal or indeterminable impact. Fifteen agencies responded with some impact, or significant impact. In most cases, current accurate data is not available to provide a good estimate, and the bill is too broad to know exactly what agency functions actually apply.
. Under Fiscal Information below is a brief description of the three main areas of fiscal concern. On the next page is a listing of the agencies fiscally impacted, and the approximate annual cost of each of the three areas, and FTEs, if needed.
. It should be noted that the fiscal information appearing in this fiscal note is in summary form due to space constraints. The agency detail for the summary information is available in the OBPP.

iscal Information:
. Section 3 requires that each agency create and maintain an interested persons list. The biggest cost in this category is postage, unless FTEs are required to maintain the listing. Most agencies are concerned with the lack of purging directions in the bill, and would appreciate more specifics on who and what.
. Section 4 requires newspaper notification of agency decisions having a significant interest to the public. For purposes of this bill, most agencies would be using the Sunday rate and the 12 point size. Most agencies currently use the 6 point size. The switch to 12 point automatically doubles notification costs. DPHHS is offering a solution in this area by proposing to send a monthly newsletter to all households in the state, since all their decisions eventually affect all citizens.
. Increased legal costs are predicted due to: 1) lifting of the 30-day filing requirement and changing to an indefinite period, 2) paying the prevailing plaintiff's legal costs, and 3) an increased number of cases due to greater communication required by this bill. Most agencies did not offer a legal cost impact because of the unavailability of trend caseload, but most agreed the result could be fiscally significant.

(continued)

Dave Lewis 2-5-97

AVE LEWIS, BUDGET DIRECTOR DATE
ffice of Budget and Program Planning

BRUCE SIMON, PRIMARY SPONSOR DATE

Fiscal Note for HB0389, as introduced

HB 389

Department of:	Mailing List Impact	Newspaper Ads Impact	Legal Costs	FTEs/ Cost/year
Administration	extensive impact but unable to quantify.			
Agriculture		$23,000		
Commerce	$20,400	717,000	**	
Corrections	137,000	1,243,000		5.00/$110,000
DEQ		251,700		
DNRC	28,000	7.500	**	
Justice	17,000	264,000	**	1.00/$25,500
Labor	**	185,500		
Comm. Of Pol.	5,000	5,000		
PSC		294,000		
Bd. Of Public Ed.	48,000	700		
PHHS	***2,535,000			2.00/$68,800
Revenue			$200,000	
State Fund		15,600		
Transportation	7,600	37,400	**	3.50/$79,500
Totals	$2,798,000	$3,044,400	$200,000	11.50/$283,800

** Agency cannot provide an accurate estimate, but believes the impact could be potentially significant.
***DPHHS has determined that a monthly newsletter mailed to all Montana households would be less expensive than individual mailings and newspaper advertisements.

FISCAL IMPACT:

Expenditures:	FY98 Difference	FY99 Difference
FTE	11.50	11.50
Personal services	283,800	283,800
Operating expense	6,042,400	6,042,400
Total	6,326,200	6,326,200
Funding:		
General fund (01)	$2,789,300	2,789,300
State special (02)	1,472,400	1,472,400
Federal special (03)	2,064,500	2,064,500
Total	$6,326,200	$6,326,200

Note: The numbers presented are conservative due to the agencies noted above that were unable to provide a reasonable estimate.

Net Impact on Fund Balance: (Revenue minus expense)

General Fund (01)	(3,701,900)	(3,701,900)

EFFECTS ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The effects cannot be estimated with any degree of accuracy, but could be potentially significant statewide based on page 3, Section 4 amendments to 2-3-104, MCA.

TECHNICAL NOTES:
1. Section 10, by striking "section 9" from existing law, would require payment of attorney's fees in all cases brought under any section of Article II of the Montana Constitution if the state does not prevail. Frivolous suits may result. Moreover, the title of the code section is unchanged by the bill and it therefore appears that the provision is still intended to apply only to cases brought to enforce the right to know provisions of the constitution. This should be clarified in the bill in order to better determine the fiscal impact.
2. Section 12(b) is erroneous in that the notices must be published in the "MAR", not the "ARM".

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0323	BOHARSKI, WILLIAM	PROHIBIT SAME-SEX MARRIAGES				
	1/22	2/13		DO PASS 02/19 VOTE: 15-5		2/19
HB0325	BRAINARD, MATT	AMEND CONST. TO MANDATE GRAND JURY IF PEOPLE PETITION FOR ONE				
	1/23	2/07		DO PASS 02/13 VOTE: 10-3		2/14
HB0337	BOHLINGER, JOHN	IMMUNITY FOR DENTISTS WHO PROVIDE CHARITABLE SERVICES				
	1/23	2/06		PASS AS AMENDED 02/12 VOTE: 19-0		2/13
HB0339	CAREY, BILL	CHANGE PENALTY FOR ONE UNDER 21 WHO FAILS DUI TEST				
	1/23	2/04		PASS AS AMENDED 02/04 VOTE: 15-0		2/05
HB0342	BARNHART, BEVERLY	ELIMINATE $10 MAXIMUM LIMIT FOR ON-CAMPUS VEHICLE AND PARKING VIOLATIONS				
	1/23	2/05		DO PASS 02/05 VOTE: 18-2		2/06
HB0343	GRIMES, DUANE	REVISE DOMESTIC VIOLENCE LAWS				
	1/23	1/31		PASS AS AMENDED 02/06 VOTE: 16-2		2/07
HB0346	TROPILA, JOE	GENERALLY REVISING LAWS RELATING TO MANDATORY MOTOR VEHICLE INSURANCE				
	1/24	2/05		TABLED ON 02/12 VOTE: 19-0		
HB0352	SLITER, PAUL	IMMUNIZE OWNER OF STOLEN PROPERTY FROM LIABLE LATER OCCURRING				
	1/25	1/30		PASS AS AMENDED 02/12 VOTE: 11-7		2/13
HB0365	MCGEE, DANIEL	CREATE OFFENSE OF CAUSING PARTIAL-BIRTH ABORTIONS				
	1/27	2/12		DO PASS 02/18 VOTE: 12-8		2/18
HB0389	SIMON, BRUCE	STRENGTHEN THE REQUIREMENTS FOR AN EMERGENCY STATE AGENCY RULE				
	1/29	2/11		TABLED ON 02/11 VOTE: 16-4		
HB0396	GRIMES, DUANE	PLACE PODIATRY IN MEDICAL LEGAL PANEL ACT				
	1/30	2/12		DO PASS 02/12 VOTE: 16-0		2/13
HB0401	BARNETT, JOE	REVISE LAWS GOVERNING BAIL				
	1/30	2/11		PASS AS AMENDED 02/11 VOTE: 20-0		2/12

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 11, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: REP. WYATT, REP. BOHARSKI and REP. TASH were excused until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 389, HB 419, HB 411, HB 401
POSTED 2/5/97

Executive Action: HB 222 DO PASS AS AMENDED
HB 292 DO PASS AS AMENDED
HB 401 DO PASS AS AMENDED
HB 411 DO PASS AS AMENDED
HB 276, 306, 419, 389 TABLED

Motion/Vote: **REP. ANDERSON moved to amend HB 306 on line 20, page 1.** The motion carried 13 - 4; REPS. SANDS, KOTTEL, HURDLE and ELLINGSON voting no. (REPS. BOHARSKI, TASH and KOTTEL were absent and did not vote.)
{Tape: 1; Side: B; Approx. Time Count: 0.4}

Motion: **REP. CURTISS moved to amend HB 306** **EXHIBIT 5**
{Tape: 1; Side: B; Approx. Time Count: 4.0}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 4.9 - 13.1}

Vote: The motion failed by voice vote.

Motion: **REP. ANDERSON moved to amend HB 306.**

Motion: **REP. DUANE GRIMES moved to table HB 306.** The motion carried 15 - 2; REPS. CURTISS and ANDERSON voting no.

HEARING ON HB 389

Opening Statement by Sponsor: **REP. BRUCE SIMON**
{Tape: 1; Side: B; Approx. Time Count: 18.0-Tape 2; Side A; 6.0}

Opponents' Testimony:

MARTIN JACOBSON, Attorney, Public Service Commission **EXHIBIT 6**
{Tape: 2; Side: A; Approx. Time Count: 6.3}

RUSSELL CATER, Chief Legal Counsel, Department of Public Health and Human Services **EXHIBITS 7 and 7A**
{Tape: 2; Side: A; Approx. Time Count: 17.8; Comments: Said he spoke on behalf of all state agencies.}

LEROY SCHRAMM, Montana University Systems
{Tape: 2; Side: A; Approx. Time Count: 25.4; Comments: This witness did not sign in.}

Informational Testimony:

BETH BAKER, Department of Justice **EXHIBIT 8**
{Tape: 2; Side: A; Approx. Time Count: 31.1}

LANCE MELTON, Montana School Boards Association **EXHIBIT 9**
{Tape: 2; Side: A; Approx. Time Count: 40.1}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 42.9-Tape 2; Side B; 15.7}

Closing by Sponsor: **REP. SIMON**
{Tape: 2; Side: B; Approx. Time Count: 15.8}

{Comments: This exhibit came after the hearing.} **EXHIBIT 9A**

End of hearing on HB 389

EXHIBIT 6
DATE 2/11/97
HB 389

HB389, An Act Allowing for Greater Public Participation in Agency Actions
55th Legislature (1997)
Before the House Judiciary Committee
Capitol, Room 312-1, 8:00 a.m., February 11, 1997

COMMENTS OF THE PUBLIC SERVICE COMMISSION

Chair, Members, and Representative Simon:

I am Martin Jacobson, a staff attorney for the Public Service Commission. On behalf of the Commission, the following comments are respectfully submitted for your consideration:

HB389 which may accomplish some good things for the state and the public. Section 8's new "constitutional right of the people" exception to the closing of meetings, section 12's use of "plain and clear English" and "familiar and understandable words" requirement, section 13's requirement for expanded explanation of the functions of the administrative code committee, section 14's correction of deficiencies by amended notice rather that adoption notice, and section 13 and 15's tightening of emergency rules, can improve administrative procedures.

However, the remaining substantive provisions of HB389 can be problematic, overly broad, and costly, can cause delay and uncertainty, and probably are not the best way to accomplish what they are apparently intended to accomplish in any event. Additionally, when these questionable changes are considered together, they may multiply the delay and expense for both the industries and the public directly involved in administrative actions.

1. HB389's removal of the time limits to contest agency actions for failure to meet the notice and open meeting requirements is contrary to the best interests of the state, parties to administrative actions, and the public.

HB389's sections 7 and 9 remove 30-day limitations on commencing court actions to set aside agency actions for deficiencies in certain procedures. The idea of removal of these statutes of limitation should be considered with care. With few exceptions legal actions, both judicial and administrative, have a time certain by which they must be filed and a time certain at which they become final and cannot be challenged. The finality of judicial and administrative actions at a time certain is important to the state, the parties involved, and the public. Decisions which might flow from such actions will remain at risk in the absence of finality.

In the present case the removed time limits pertain to matters which can and should be brought forth immediately. Without the time limits agencies might not even be aware that someone might assert that an error has been made, the agency can therefore take no timely action to correct the deficiency, and the agency could proceed at expense to all involved to conclusion or even implementation of an action before being challenged. That could lead to extreme waste for the state and the public. Even parties contesting the merits of an administrative action must challenge it within 30 days.

2. The definition of "significant interest to the public" is unnecessarily broad.

The effect of HB389's sections 1, sub 4, and 11, sub 13, is to change the public notice requirement from noticing certain identified agency actions to noticing any actions falling under a new definition of "significant interest to the public." The definition includes actions which involve: (a) a controversial matter; (b) a fiscal impact; or (c) a significant citizen interest.

This definition is extremely broad and can be reasonably construed as encompassing matters that the public likely would not demand in any way be noticed. For example, "controversial matter" could encompass interlocutory actions, such as ruling on motions, granting extensions of time, setting procedural schedules, and conducting similar day-to-day business regarding pending proceedings. It would also include complaints, which are between two parties and seldom of great

public interest. As another example, "fiscal Impact" would include routine actions which involve matters such as making utility service options available to the public, having a fiscal impact only to those who might choose the option.

3. The new definition of "interested persons" and the requirement that agencies maintain a "list of interested persons" should be qualified.

Present law requires most agencies to maintain a list of interested persons for rulemaking purposes. Persons must make a request to be on the list. § 2-4-302(2), MCA. HB389's sections 3, sub 1, and 11, sub 6, extend the list requirement to all agency actions and include a provision that a person's name must be placed on the list if the person has in "any way" contacted the agency for "any purpose" concerning agency actions.

The Commission is not opposed to the idea of lists of interested persons. The Commission maintains lists for rulemaking and for other agency actions and could not properly conduct business without those lists. However, the Commission requests that this committee consider two important and practical things pertaining to lists:

a. the law should require that persons who are interested in agency actions must make a specific request to be on the list; and

b. the law should include a provision that the agency may, at least on an annual basis, notify the persons on a list that they must advise the agency of address changes, if any, and whether they want to remain on the list.

Some persons do not want to receive agency notices simply because they at one time felt a need to communicate with an agency. The Commission has received complaints from people who have continued to receive lists after they have no longer wanted them, but have not advised the Commission of that, sometimes for a period of years. It may be simpler for a person who once was interested to throw notices away rather than to advise the agency that there is no longer an interest.

4. The requirement for publication of "newspaper advertisements" is costly.

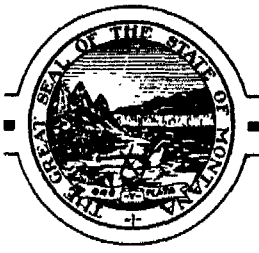
Under present laws governing state agency actions newspaper publication is generally an option. Some agencies, like the Commission, must publicly notice by newspaper publication certain contested cases (e.g., § 69-3-303, MCA, on increases in utility rates). MAPA presently requires most agency rulemaking to be published in the adminitrative register. Contested cases and rulemaking are the most common formal actions of administrative agencies. These are the agency actions where matters of substance and significance are proposed and considered.

HB389's section 4, sub 3, requires newspaper advertisements of all agency actions, in 12 point type, and in the Sunday addition if there is one. Advertisements are more expensive than legal notices, 12 point type is more expensive than regular type, and the Sunday edition is more expensive that week day editions. HB389's section 12, sub 2(c), extends the requirement to rulemaking notices. Rulemaking notices can be extensive.

The committee should carefully consider the newspaper "advertisement" requirement and confine it to more precise types of administrative actions where newspapers may present the best means to cover a wide area. The Commission also questions whether 12 point type and the Sunday edition requirement, rather than standard newspaper legal notices, would actually accomplish any more. The legislature should also consider that, if there is to be publication of rulemaking notices in a newspaper, an accurate summary of the proposed rulemaking would suffice. It might also assist agencies if the bill would clarify that publication "in the area affected" will be deemed met by publication in a major daily newspaper in the area.

EXHIBIT 7
DATE 2/11/97
HB 389

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES



MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

PO BOX 4210
HELENA, MONTANA 59604-4210

House Bill 389
(Public Participation in Agency Actions)

HB 389 imposes expensive and time consuming requirements upon state agencies and local government. Be sure to read HB 389 very carefully. The following is a short synopsis of the bill.

1) Sections 2 and 3: Current law requires agencies to establish procedures to encourage public participation in agency decisions that are of "significant interest to the public." That term is currently not defined by statute. Therefore its interpretation is left to the agency subject to judicial determinations of fairness according to the facts of the case. This bill defines "significant interest to the public" (SITP) to include decisions of the agency that "involve a controversial matter, a fiscal impact on a particular class or group of individuals, or significant citizen interest." Many agencies of state government make hundreds of decisions a day that would fall within the amended version of the law if HB 389. This bill astronomically increase the number of public hearings that will be required to be held by state and local government. (If HB 376 passes as well, all of these hearings may be required to be held in various communities around the state; not just in Helena.)

2) Sections 3: Each agency is required to maintain a list of "interested persons". This list must include anyone submitting oral or written comments at any meeting or anyone that contacts the agency for any reason. The agency would be required to send notices of each agency action that is controversial or that has a fiscal impact upon a group or class of individuals, or matters pertaining to rules, contracts and licensing. Postage and printing costs alone would be astronomical. Staff time required to maintain the mailing lists, and to send notices would require the addition of numerous government employees and the taking of valuable time away from other necessary duties.

3) Section 4: This section amends the current law that outlines what is considered appropriate notice. Using the notice requirements for proceedings under the Administrative Procedure Act is no longer sufficient by itself. (For example, MAPA currently requires publication of rule notices in the Montana Administrative Register. Newspaper advertisements would be required if HB 389 passes.) Notice of agency actions would have to be by 12-point type advertisements. News stories would not be considered an adequate notice as currently permitted by law. It may be necessary to

amend this section to clarify whether it mandates notice according to at least one of the three items mentioned as satisfying public notice or whether actual notice, radio ads or less burdensome but equally effective methods of notifying the public would suffice. If newspaper advertisements are required for all agency decisions (unless otherwise directed by a special law), the fiscal impact of advertising costs alone would be staggering.

3) Section 7 and 9: Current law requires legal actions to be brought within 30 days. This time limit is now removed. If the 30 day time limit is removed, the five year general statute of limitations would apply (three years for local govenment actions).

4) Section 8: Discussion of litigation strategy by government agencies will be open to the public if the matter involves a constitutional right.

5) Section 10: This section mandates the payment of attorney fees and costs to the prevailing plaintiff; but not to the government agency if it prevails. If a party is not represented by an attorney, the plaintiff can collect 90% of an attorneys reasonable fee. Frivolous lawsuits against the state and local government will increase.

6) Section 12: All agency rule notices would be required to be advertised in the newspapers within the area affected by the rule. Most state agency rules have statewide impact. Thus, numerous newspaper ads would be necessary.

7) Section 13: Emergency rules are more limited than previously. Loss of significant federal funds as a reason for implementing an emergency rule would not fall within this definition.

8) Section 14: The agency must, when adopting rules, "comprehensively" state the reasons for overruling the considerations urged against its adoption. This is currently done but in a "concise" or summary manner.

Note: The application of HB 389 is likely to have a significant inpact on local governments, and local boards, etc. because "agency" is defined in section 2 of the bill (and in current law) to include those entities.

Comments prepared by:
Russell E. Cater
Chief Legal Counsel
Department of Public Health and Human Services

g:legisl\comments\hb389-2.mtg

EXHIBIT 7A
DATE 2/11/97
HB 389

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

PO BOX 4210
HELENA, MONTANA 59604-4210

Testimony of Russell E. Cater
Chief Legal Counsel
Department of Public Health & Human Services
HOUSE BILL No. 389
(Public Participation in Agency Actions)

Public participation in government is important. It is required by the Montana Constitution and State statutes. The public should be given notice of agency actions that are of significant interest to the public. Agencies should encourage public participation.

House Bill No. 389, however, will require significant financial cost to all state and local government agencies. HB 389 will require significant added burdens and time compiling mailing lists and distributing notices to people that have in some way contacted an agency.

Requiring agencies (which by definition includes local governments) to create extensive "interested persons list" is not the way to ensure public participation. HB 389 requires agencies to create a list of persons that submit oral or written comments, attend hearings, or in any way contact the agency. Agencies would be required to give individual notices to these persons of agency actions that involve controversial matters, or decisions that have a fiscal impact on a group of individuals.

Section 4 indicates the means by which an agency can comply with the required notice provisions. For most agencies, costly newspaper advertisements will be the only means of complying with this section.

Hundreds of people contact the Department of Public Health and Human Services on a daily basis. There are hundreds of different programs within DPHHS. These programs range from issues involving welfare benefits, child abuse and neglect, child support enforcement, licensing and regulations of hotels, motels, swimming pools, trailer parks, food establishments, daycare facilities, etc. DPHHS issues over 10,000 licenses per year. There are over 1,000 written contracts with DPHHS. This does not include the 8,000 medical providers that provide services under written agreements with the Department for its Medicaid program. DPHHS provides services directly or through contracts to over 100,000 Montanans. The Department spends in excess of 1.4 million per year for postage alone. (That amount does not include printing costs or labor.) HB 389 requirements will

significantly increase mailing, printing, advertising and labor costs.

House Bill 389 paints with too broad of a brush stroke in requiring agencies to develop procedures and notice requirements that will cost far more than the benefit to the public. Agencies should be held accountable for notifying the public and encouraging the public to participate in important agency actions. They should not, however, be forced to provide notices and lists of persons that are not necessary.

House Bill 389 encourages lawsuits against the state by deleting the current requirement that persons must bring challenges in court within thirty days if they are challenging inadequate notice requirements of local and state government agencies. By deletion of the thirty day requirement, individuals will be allowed up to five years to challenge any agency decision or any contract issued.

HB 389 mandates that attorney's fees be awarded to the prevailing plaintiff, but makes no such allowance for attorney's fees if the local or state agency prevails. Non-attorneys are entitled to 90% of what an attorney would charge if they prevail. Non-attorneys (such as prison inmates) do not have the business overhead associated with a law practice, e.g. office space and equipment, secretaries, etc. These provisions will encourage frivolous lawsuits.

House Bill 389 prohibits closed meetings to discuss litigation strategies involving constitutional rights. Attorneys representing the state will no longer be able to discuss litigation strategy in closed meetings.

House Bill 389 requires unnecessary publication in newspapers of all agency rules.

Public participation in local and state government is essential. House Bill 389, however, requires unnecessary and very costly actions which cannot be justified for every agency action that falls within the definition of section 2(2) and (4). For the above stated reasons, it is recommended that you vote against House Bill 389.

Russell E. Cater
Chief Legal Counsel
Department of Public
Health & Human Services

EXHIBIT 8
DATE 2/11/97
HB 389

Amendments to House Bill 389
Introduced Bill (White)

Prepared by Beth Baker
Department of Justice
February 10, 1997

1. Page 3, line 10.
   Following: "~~advertisement~~"
   Insert: "a news story or"

2. Page 3, line 12.
   Strike: "The"
   Insert: "If an advertisement is used, the"

3. Page 4, line 1.
   Strike: Section 6 in its entirety.
   Renumber: Remaining sections.

4. Page 5, lines 1 and 2.
   Strike: "involving the enforcement or preservation of a constitutional right of the people or"

5. Page 5, line 13.
   Strike: Section 10 in its entirety.
   Renumber: Remaining sections.

EXHIBIT 9
DATE 2/11/97
HB 389

House Bill 389 Concerns

Section 3 of the Bill, Page 2, lines 21-22

The language requiring an agency to place any person who attends any hearing to be placed on an interested persons list could be difficult to comply with. Even if the agency maintains a sign in sheet, not all persons attending will sign it, as you folks are likely aware from reviewing the incomplete attendance rosters on bills heard before this committee.

Suggestion: Restrict an agency's obligation to compile an interested persons list to only those individuals who have submitted oral or written comments or who have signed in on the attendance roster at the hearing.

Section 3 of the Bill, Page 2, lines 22-23

The language requiring an agency to place a person on an interested persons list who contacts the agency "in any way" will place an undue tracking burden on agencies. A person who makes an offhand comment to an off-duty employee of the agency could be construed, under a liberal construction of the statute, to have "contacted" the agency regarding a particular issue. We would like to see some additional clarification in this language to prevent such a result.

Suggestion: Restrict an agency's obligation to compile an interested persons list to only those individuals who have contacted the agency in writing regarding a particular matter, or who have requested, either in writing or orally, to be placed on the agency's interested persons list.

Section 4 of the Bill, Page 3

Is the intent of this section to restrict proper notice to one of the means identified in this section? Historically, this section has been construed to be a permissive means of guaranteeing compliance with the notice requirements of law. If the changes to this section are intended to make the provisions mandatory, it could be significantly harsh on smaller school districts that currently notice meetings by posting at a community center, post office, school, or local grocery store.

Section 6 of the Bill, Page 4, line 6

This section allows an agency to by-pass the notice requirements when it decides to file a lawsuit. In terms of timing and deadlines, it is just as likely that an agency will be under a pending deadline to respond to a suit as to file one.

Suggestion: Amend the language to provide an exception for an agency decision to file a ***pleading*** in a lawsuit. This will provide needed flexibility to an agency under a deadline for response

Section 7 and Section 9

These sections strike the current deadline of 30 days after the date of a decision for filing a suit to void an agency action held in violation of the open meeting laws. Without any deadline, an agency will be subject to an ongoing potential for challenge to final agency actions, even years after the final decision has been made.

Suggestion: Place some deadline for filing the action to void, preferably within a reasonable time of the decision to avoid a significant impact on individuals affected by the now-voided decision.

EXHIBIT 9A
DATE 2/20/97
HB 389

BOB GILBERT
LOBBYIST ---- CONSULTANT
1003 HIGHLAND
HELENA, MONTANA 59624

February 16, 1997

The Honorable Bob Clark
Montana House of Representatives
Chairman, House Judiciary Committee
State Capitol Building
Helena, Montana 59620

Ref: House Bill # 389, Rep. Simon

TO: Rep. Bob Clark, Chairman and members of the House Judiciary Committee

Recently, HB 389 was presented to your Committee. This Bill addresses a number of preceived problems in the Montana Administrative Procedures Act.

I do not wish to comment on the merits of the proposed legislation. I would, however, like to comment on an experience I had during the last interim.

As the Lobbyist for The Montana Tow Truck Association I was involved with the rule making process for the Montana Tow Truck Act of 1995. At our request the Department of Justice granted the use of the Negotiated Rule Making Process. Several meetings were held between the Department of Justice attorney, Rob Smith, Col. Craig Reap and Maj. Obert of the Montana Highway Patrol, members of the Tow Truck industry, the Motor Carriers Service Division of the Department of Transportation, the Public Service Commission, the American Automobile Association, and a member of the Insurance Industry. Ideas were discussed and the rules began to take shape. Copies of the proposed rules were sent to many interested parties and comments were encouraged. A public hearing was held in Helena with many people attending with comments both in favor of and opposed to the proposed rules. Because of the number of concerns the proposed rules were re-written after a meeting in Helena with a small group representing both sides of the issue. Again, copies of the new rules were sent out for comment and another, the 2nd, public hearing was held in Helena. As a result of the 2nd public hearing some adjustments were again made and the rules were published.

It is my feeling that the Department of Justice, their attorney, Rob Smith and the Montana Highway Patrol represented by Col. Craig Reap and Maj. Bert Obert did an outstanding job of insuring public input during the rulemaking process. They worked with those who expressed concerns and attempted to resolve those concerns. The public interest was very well served during the entire process.

Having been involved in a number of rule making procedures it is my opinion that it works well more often than not. There is one great need and that is notification to the primary sponsor of the enacting legislation at the beginning of the process.

Thank you for your time and indulgence.

Bob Gilbert

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0389, third reading, as amended

DESCRIPTION OF PROPOSED LEGISLATION:
A bill providing for greater public participation in agency rulemaking and other agency actions, and amending provisions for notice of agency rules and actions.

ASSUMPTIONS:
General Information:

1. This bill requires notice of agency decisions that are of a significant interest to the public. Section 2(4) defines "significant interest to the public " as the undertaking of an agency action or decision that involves a matter that the agency knows to be controversial, a significant fiscal impact on a particular class or group of individuals, or significant citizen interest.
2. A fiscal note response was requested from 28 state agencies in order for the OBPP to prepare the fiscal note for HB 389. Most of the smaller agencies responded with minimal or indeterminable impact. Fifteen agencies responded to the bill, as introduced, with some impact, or significant impact. One of those fifteen agencies determined that the bill, as amended, no longer has a significant fiscal impact. In most cases, current accurate data is not available to provide a precise estimate, and the bill is too broad to know exactly what agency functions actually apply.
3. Under Fiscal Information below is a brief description of the three main areas of fiscal concern. On the next page is a listing of the agencies fiscally impacted, and the approximate annual cost of each of the three areas, and FTE if estimated to be needed.
4. It should be noted that the fiscal information appearing in this fiscal note is in summary form due to space constraints. The agency detail for the summary information is available in the OBPP.

Fiscal Information:

5. Section 3 requires that each agency create and maintain an interested persons list containing the subject or subjects in which each person on the list is interested. The biggest cost in this category is postage, unless FTE are required to maintain the listing. Most agencies are concerned with the lack of purging directions in the bill, and would appreciate more specifics on who and what.
6. Section 4 requires newspaper notification of agency decisions having a significant interest to the public. For purposes of this bill, most agencies would be using the Sunday rate and the 12 point size. Most agencies currently use the 6 point size. The switch to 12 point automatically doubles notification costs. The Department of Public Health and Human Services (DPHHS) is offering a solution in this area by proposing to send a monthly newsletter to all households in the state, since all its decisions eventually affect all citizens.
7. Increased legal costs are predicted due to: 1) paying the prevailing plaintiff's legal costs, and 2) an increased number of cases due to greater communication required by this bill. Most agencies did not offer a legal cost impact because of the unavailability of trend caseload, but most agreed the result could be fiscally significant.

(continued)

Dave Lewis 3.14.97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRUCE SIMON, PRIMARY SPONSOR DATE

Fiscal Note for HB0389, third reading, as amended

HB 389 #2

Department of:	Annual Mailing List Impact	Annual Newspaper Ads Impact	Annual Legal Costs	FTEs/ Cost/year
Administration	extensive impact but unable to quantify.			
Agriculture		-0-		
Commerce	-0-	227,000	**	
Corrections	137,000	1,243,000		5.00/$110,000
DEQ		229,000		
DNRC	28,000	7,500	**	
Justice	25,000	3,500	**	1.25/$31,000
Labor	**	185,500		
Comm Pol. Prac.	5,000	5,000		
Public Serv Reg	127,000			
Bd. Of Public Ed	48,000	700		
PHHS	***2,535,000			2.00/$68,800
Revenue			$200,000	
State Fund		15,600		
Transportation	7,600	37,400	**	3.50/$79,500
Totals	$2,912,600	$1,954,200	$200,000	11.75/$289,300

** Agency cannot provide an accurate estimate, but believes the impact could be potentially significant.
***DPHHS has determined that a monthly newsletter mailed to all Montana households would be less expensive than individual mailings and newspaper advertisements.

FISCAL IMPACT:

Expenditures:	FY98 Difference	FY99 Difference
FTE	11.75	11.75
Personal services	289,300	289,300
Operating expense	5,066,800	5,066,800
Total	5,356,100	5,356,100
Funding:		
General fund (01)	2,747,800	2,747,800
State special (02)	902,800	902,800
Federal special (03)	1,689,900	1,689,900
Proprietary (06)	15,600	15,600
Total	5,356,100	5,356,100

Note: The expenditure amounts presented are conservative due to the agencies noted above that were unable to provide a reasonable estimate.

Net Impact on Fund Balance: (Revenue minus expense)		
General Fund (01)	(2,747,800)	(2,747,800)

EFFECTS ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The amendments to 2-3-104, MCA (section 4 of the bill) apply to local government entities and requires those entities to pay the costs of the required advertisements. The estimated fiscal impact, if any, is not subject to reasonable estimate.

MONTANA HOUSE OF REPRESENTATIVES
55TH LEGISLATURE
1997 REGULAR SESSION
VOTE TABULATION

DATE: FEBRUARY 26, 1997
TIME: 8:53 AM

SEQ. NO: 102.0
BILL NO: HB 389
BILL SP: SIMON

YES	NO	EXC	ABS
71	28	0	1

ORDER OF BUSINESS 8 3RD READING
3RD READING D/PASS

N	ADAMS	N	HANSON, HS	Y	PROUSE
N	AHNER	Y	HANSON, M	Y	QUILICI
N	ANDERSON	Y	HARPER	Y	RANEY
N	ARNOTT	N	HARRINGTON	Y	REAM
Y	BANKHEAD	N	HAYNE	Y	REHBEIN
Y	BARNETT	Y	HEAVY RUNNER	Y	ROSE
Y	BARNHART	Y	HIBBARD	Y	RYAN
Y	BEAUDRY	Y	HOLLAND	Y	SANDS
N	BERGMAN	N	HURDLE	Y	SCHMIDT
Y	BERGSAGEL	Y	JOHNSON, J	Y	SIMON
Y	BITNEY	Y	JOHNSON, R	Y	SIMPKINS
N	BOHARSKI	N	JORE	N	SIMPSON
Y	BOHLINGER	N	KASTEN	N	SLITER
Y	BOOKOUT	A	KEENAN	N	SMITH
Y	BRAINARD	Y	KITZENBERG	Y	SOFT
Y	CAREY	Y	KNOX	N	SQUIRES
Y	CLARK	N	KOTTEL	Y	STORY
Y	COBB	Y	KRENZLER	Y	STOVALL
Y	COCCHIARELLA	Y	LAWSON	Y	SWANSON
Y	CURTISS	Y	MARSHALL	Y	TASH
N	DeBRUYCKER	Y	MASOLO	Y	TAYLOR
Y	DENNY	Y	McCANN	Y	TREXLER
N	DEVANEY	N	McCULLOCH	Y	TROPILA
Y	DOWELL	Y	McGEE	N	TUSS
N	ELLINGSON	Y	MENAHAN	N	VICK
Y	ELLIS	Y	MILLS	N	WAGNER
Y	EWER	N	MOLNAR	Y	WALTERS
Y	FELAND	N	MOOD	Y	WELLS
Y	GALVIN	Y	OHS	Y	WHITEHEAD
N	GILLAN	Y	ORR	N	WISEMAN
Y	GRADY	Y	PAVLOVICH	Y	WYATT
Y	GRIMES	Y	PEASE	Y	ZOOK
Y	GRINDE	Y	PECK	Y	MR. SPEAKER
Y	HAGENER				

VOTED ABSENTEE: MARSHALL, YES.

SENATE STATE ADMINISTRATION

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0389	SIMON, BRUCE 3/03	3/13	3/14	STRENGTHEN THE REQUIREMENTS FOR AN EMERGENCY STATE AGENCY RULE CONCUR AS AMENDED 3/17 VOTE: 4-2		3/20
HB0394	GRINDE, LARRY HAL 3/03	3/12	3/14 3/17 3/24	REGULATE LOBBYING BY STATE AGENCIES CONCUR AS AMENDED 3/27 VOTE: 4-2		3/28
HB0422	GILLAN, KIM 2/19	3/10		ELIMINATE REQ'T FOR ORIGINAL OF FACSIMILE DOCS. TO BE FILED WITH SEC. OF ST. CONCUR AS AMENDED 3/10 VOTE: 6-0		3/11
HB0430	SIMON, BRUCE 3/03	3/20		INCREASE BENEFITS IN THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM CONCUR AS AMENDED 3/25 VOTE: 6-0		3/26
HB0439	SCHMIDT, TRUDI 2/19	3/11		EXPAND YOUTH VOTING TO ALLOW STUDENTS TO VOTE AT OTHER THAN POLLING PLACE CONCUR 3/11 VOTE: 6-0		3/12
HB0468	GILLAN, KIM 3/04	3/12		AUTHORIZE SEC. OF ST. TO DEVELOP/IMPLEMENT ELEC. FILING SYSTEM; REQ'TS CONCUR AS AMENDED 3/14 VOTE: 6-0		3/17
HB0496	FELAND, GARY 3/04	3/17		ALLOW CERTAIN COUNTY HOSPITAL/REST HOME EMPLOYEES TO NOT BECOME PERS MEMBERS CONCUR 3-18 VOTE: 5-0		3/20
HB0499	BOHLINGER, JOHN 3/27	4/08		CREATE OFFICE OF STATE COORDINATOR FOR ETHNIC AFFAIRS TABLED ON 04/11 VOTE: 4-2		
HB0501	WAGNER, DOUGLAS 2/21	3/11		REVISE BALLOT AVAILABILITY IN SPECIAL BOND ELECTIONS; REVISING NOTICE CONCUR 3/11 VOTE: 6-0		3/12
HB0505	BEAUDRY, HALEY 3/04	3/19		REDUCING VESTING IN MUNICIPAL POLICE RETIREMENT SYSTEM TO 5 YEARS CONCUR 3/25 VOTE: 6-0		3/26
HB0521	RYAN, WILLIAM 2/21	3/13	3/14	REVISING THE GENERAL RULES FOR DETERMINING RESIDENCE CONCUR AS AMENDED 3/17 VOTE: 5-0		3/18
HB0534	WELLS, JACK 3/06	3/13	3/14	MAKE STATE LIABLE FOR INTEREST/ATTORNEY FEES IN JUDGMENT INVOLVING CONTRACT CONCUR AS AMENDED 3/19 VOTE: 6-0		3/20

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 13, 1997, at 10:00 a.m., in Room 331

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 389, HB 521, HB 534
Executive Action: HB 361

EXECUTIVE ACTION ON HB 361

Amendments: HB036101.adn (**EXHIBIT 1**)

Discussion:

Chairman Hargrove explained the amendments. They have dealt with 5, 7, 8, 9, 11 and 14 and the rest are to be considered jointly.

Mr. Niss explained that the effects of paragraphs 3 and 4 of the amendment is that this would exempt from the posting requirements, household pesticides that are approved by the Department, pursuant to 88-212, for household use. Commercial pesticides are the only pesticides which would be required to be posted for their application. Six is connected to the permanent signing, if regular application is required. Paragraph 10 deletes the date of application from the posting requirement. Paragraph 12 substitutes the phone number from which the person

SEN. GAGE asked how this addressed mediations which were handled without going to court? **Mr. Niss** explained the state would have incentive to settle earlier with this bill.

SEN. GAGE remarked that with this bill they do not necessarily need a judgment to have the interest continue. **Mr. Niss** stated that a contractor may have to obtain a judgment in order to collect it.

Closing by Sponsor:

REP. WELLS stated this bill should put the state in a position where they want to negotiate. He has a bit of a problem with the amendment presented by **Mr. Gianoulias** as far as how the interest rate is provided in (b) by 25-9-205 versus where 17-8-242 applies. The problem is the good faith/bad faith wording, a bad faith judgment can be difficult to obtain. Greg Petesch suggested using 25-9-205. He does not like the 1st and 2nd amendments presented. The option two amendment is a good addition to this bill in that it defines prevailing parties.

The basic intent of this bill is to make the state liable and treat citizens of the state fairly. This would provide an incentive for the engineers and contract people who work for the state to do a good job in the initial bidding and letting of contracts.

{Tape: 1; Side: B; Approx. Time: 11:12 a.m.; Comments: End of Tape 1, Side B.}

HEARING ON HB 389

Sponsor: **REP. BRUCE SIMON, HD 18, BILLINGS**

Proponents: **None**

Opponents: **Annie Bartos, Chief Legal Counsel, Department of Commerce**
Beth Baker, Assistant Chief Deputy Attorney General, Department of Justice
Russ Cater, Chief Legal Counsel, Department of Public Health and Human Services

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 18, BILLINGS, reported that, over the past couple of years, he has run into some problems dealing with the whole issue of public notification and rulemaking. He noted that this is a problem all Legislators struggle with, in a variety of ways, but indicated that he has discovered there are some problems with the way the public is notified of what State government is doing that involves the citizens and, a lot of time, people do not know what is being done. He displayed a copy of the *Montana Administrative Register*, asked how many Committee

members recognized it, and then stated that this is where all of the rule notices, and that sort of thing, are printed, and that it is published about every two weeks. He said that he gets them, now, that Legislators can get them at no charge, and then asked who do they think gets that book, and is it adequate notice, that most of the names on the list to receive the *Montana Administrative Register*, approximately 230 names, are other government agencies, and a few law firms which deal State agencies. He reported that the cost to non-Legislators is $300 a year, and stated that it is unreasonable to expect citizens to spend $300 a year for the *Montana Administrative Register* in order to keep up with what their government is doing.

REP. SIMON remarked that government agencies have taken the tact that printing in this is adequate public notice, and asked the Committee if they think it is, stating that he does not, that he does not think it is adequate public notice when the public really does not get this, the public does not read this and, if they did get it, it would cost them $300 a year to be informed. He added that he, as a Legislator, has been asked to be informed on a number of issues, and that sometimes he is informed, sometimes he is not. He said he thinks there is a need to improve the definitions, and tell the departments when they need to notify people, and when they do not. He referred to page 2, lines 13 through 15 of the bill, and explained that this will address what is a matter of significant public interest, noting that there were some changes in the House, but that, basically, it is an agency action or decision that involves a matter the agency knows to be controversial, has a significant fiscal impact on a particular class or group, or is of significant interest on the part of citizens, that he thinks that is pretty reasonable. He added that, when that is met, there is need for the department to take additional steps to notify the public, that printing in the *Montana Administrative Register* is not good enough when there is a matter of significant public interest. He pointed out that, in various departments, including the Department of Commerce, the adoption of a rule is considered a matter of significant public interest, that this is set out in their rules. He indicated that this bill provides that adoption of a rule is considered a matter of significant public interest and, as such, triggers some additional public notification.

He then referred to Section 3, and stated that they tried to make it "user friendly" for the public by making it clear that agencies are required to maintain lists of interested persons, to let the public know that they do maintain these lists, indicating that the departments do not tell people that they maintain these lists, and this will require them to notify the public that they maintain a list of interest persons, and how to get on that list. He reported that people have told him they asked to be informed on agency actions, but perhaps did not use the correct terminology, and were not placed on the list. He cited the example of the Building Department, stating that he knows there were specific requests by the Homebuilders of Billings to let

them know what the Department was doing, but they were not contacted when rules were changed or adopted, that they were not on the list of interested persons, even though they had specifically requested to be on the list, and this bill will clarify that the departments do have a responsibility, that they will maintain those lists and, when someone asks to be on the list, they will be placed on the list until they ask to be taken off the list. He noted that these lists are purged every year and everyone has to reapply, that the department can verify these lists but, until a person requests their name be removed, they should remain on the list.

REP. SIMON noted that he believes the people who will be testifying are primarily opponents, that they are, for the most part, representing government agencies and have some additional problems with this bill, but explained that the basis of this bill is to try to involve the public in the process. He stated that we don't represent government, we represent people and, as such, this is letting the people be part of the process, which is what he is trying to do. He added that he is not trying to make this a real onerous thing, but can tell the Committee what agencies think of it, that they write fiscal notes, and he drew the Committee's attention to the fiscal note, (**EXHIBIT 6**) indicating that letting the public know what agencies are going to do will cost over $6 million, according to the original fiscal note. He said that he thought it was ridiculous and laughable, that he would not bother to sign such a laughable fiscal note, but reported that they amended it in the House to address some of the concerns that every time someone showed up at an agency, that person would have to be put on a list. He stated that this was not his intent, and he is not trying to make it that onerous on the departments, noting that they have huge mailing lists. Regarding the $6 million a year, he gibed that a Senatorial Campaign in this State did not cost that kind of money, even though there were huge media advertisements. He then indicated that, originally, there was a requirement for newspaper advertisements, but this has been changed to news releases or other means. He noted that he was really offended by the fiscal note.

REP. SIMON then indicated that he wanted departments to communicate in plain English. He showed the Committee an advertisement in the February 9, 1997 ***Billings Gazette***, and pointed out how illegible it is due to its size, and the amount of information contained in the ad, adding that they are written in a way so as to be difficult to understand. He read the advertisement for the Committee's benefit, emphasizing how difficult it is to understand, and stated that the public notice is there, but he does not know what they are talking about, that it is not clear to him, and it seems to him that they should say it a little more plainly, to let the public know what they are really talking about. He indicated that he thinks he has said enough in his opening, that he appreciates the Committee's attention, and said that he expects the Committee will hear from

others, noting that he did not make the attempt to bring in a lot of citizens to speak on behalf of the bill, although he thinks there are a number who are very interested in this bill as they recognize this is important to their ability to reach and effect what government is doing to them. He said he would appreciate the Committee's consideration, and the opportunity to close.

{Tape: 1; Side: B; Approx. Time:11:25 a.m.; Comments: None.}

Proponents' Testimony: None

Opponents' Testimony:

Annie Bartos, Chief Legal Counsel, Department of Commerce, stated that the Department does not support HB 389. She commended the work that **REP. SIMON** has done on this bill, indicating that they all see the need for the citizens of the State of Montana to become involved in the processes of State Government, but pointed out that there are some problems that exist with this bill. She distributed copies of amendments, (**EXHIBIT 7**) indicating that they are recommendations from the Department. She referred to page 2, line 14 of the bill, the definition of significant interest to the public, and explained that the amendment she would recommend is an attempt to more clearly define controversial, to indicate that a decision is controversial to more than just one person, but would involve a controversy between two or more groups of citizens. She pointed out that, if a person has a contested case proceeding involving one of their occupational licensing boards, under this bill as written, that individual would be impacted by this proposed legislation. She then referred to number 9 of her amendments, which amends page 3, line 19 and 20, and reported that the Department recognizes that the bill proposes notice requirements, and indicated that news stories would be published, and the State Bulletin Board would pick up notice of the Agency action. She stated that the problem is the 12 point type advertisements, and pointed out that would essentially be regular newspaper print, that it would not be the small legal notice section of the newspaper, and would be an additional cost to State government for running those notices in the newspaper. She indicated that their recommendation would be to strike that language. She then referred to page 5, line 28 through 30, and reported that the bill provides for an award of attorney fees to non-attorneys in the event the citizen should prevail in an action against a State agency for not complying with the open meeting law. She said that the Department proposes that this language be stricken, and indicated that the danger they face as State officials, as well as Legislators and the Judiciary Branch, is that there are frivolous law suits being brought by prison inmates, by the militia, by the Freeman, and this will only encourage those type of legal actions against State agencies.

Ms. Bartos indicated that numbers 16 and 17 of the proposed amendments relate to page 10, line 8 of the bill, regarding the

provision for emergency rule power given to agencies if there is a finding of imminent peril to public health, safety and welfare. She indicated that the Department recommends the language existing in current law continue to exist, that it gives a citizen the right to seek judicial review of emergency rules that have been promulgated by an agency, that this bill provides for an immediate judicial review, and it may only be brought by one person. She explained that the Department's concern is that one citizen may be able to tie up important emergency rule-making authority of a department. She noted that there are additional amendments which are more minuscule, that they are the substantive amendments, and she would be more than willing to work with **REP. SIMON** in working through this bill.

Beth Baker, Assistant Chief Deputy Attorney General, Department of Justice, said she is reluctant to comment to this bill because the Department is a strong proponent of public participation in government, indicating that the Attorney General has issued many opinions upholding the public's right to know and to participate. She stated that she is speaking to only one section of the bill, a section that really does not have anything to do with the rest of the bill, or with public participation in government, and that is Section 8, on page 5 of the bill. She noted that **Ms. Bartos** alluded to this, and explained that this section would constitute a substantive grant of attorneys fees in all cases brought under Article 2 of the Montana Constitution. She referred to line 27 of page 5, pointing out that the language "section 9" has been stricken, and indicated that section 9 is the right to know provision of Article 2, and explained that, in current law, this section allows the plaintiff to recover attorneys fees in an action brought to enforce the right to know and, by striking those two words, it authorizes attorneys fees in all cases brought under Article 2, which is the Declaration of Rights Article of our State Constitution, that it includes freedom of speech and religion, searches and seizures, and all sorts of rights granted to criminal defendants, which is the primary reason for her appearance here today. She indicated that she does not believe that section of the bill is related to public participation in government, that it is not reflected in the title of the bill, and comes as a surprise, adding that they have particular concern about encouraging frivolous inmate litigation against the State, particularly in post-conviction proceedings that their offices handles. She explained that criminal defendants are allowed to bring a civil action challenging the legality of their conviction or sentence after the whole criminal appeal process is over, and reported that, in 1996, they opened 70 new post-conviction cases brought by inmates challenging their convictions and, in almost every case, they alleged some violation of the Constitutional right. She noted that the State wins most of those cases, but that they all involve a substantial commitment of time and resources, adding that they have been making efforts this session to try to discourage frivolous inmate litigation, and they believe this section of the bill will only encourage it.

Ms. Baker then indicated that attorneys fees in civil cases are already recoverable against the State, under current law, if the State's position is found to be frivolous or pursued in bad faith, that this is in Section 25-10-711. She distributed copies of the statute (**EXHIBIT 8**), and stated that they believe this section already grants protection against abuses of government power, and that further provision for an award of fees is not necessary. She added that, beyond that, the use of the term "prevailing", the award of attorney fees, alone, will or can generate litigation, and this is not unlike a provision in Federal law that allows people to recover, if they are the prevailing party in actions to enforce their civil rights. She pointed out that there is a lot of litigation in the Federal courts over what that means, noting that "prevail" does not necessarily mean that you win the case, that, if you prevail on an issue, you may be entitled to attorneys fees under the Federal law, and they are concerned that, in a lot of the prison cases, sometimes the court does find that there was an error at trial, but that it was not substantial enough to reverse the conviction and that, even in that case, they could be faced with litigation over awarding an inmate 90% of what an attorney might have gotten with respect to the single issue on which the inmate prevailed.

She reported that she had several discussions with **REP. SIMON** about this bill when it was in the House, and that she asked him to take out this section, that he did not want to do that, but he did, at her suggestion, attempt to make it reciprocal because, if the State is entitled to recover fees, then perhaps it will discourage some of the frivolous litigation. She said that she appreciates his attempt to do that by substituting the word "party" for the word "plaintiff", but indicated that this discussion was held shortly before amendments were made on the floor, and she does not think the amendments accomplish making it reciprocal because use of the word "party" on line 27 means that it has to be an action brought to enforce the party's rights under Article 2 in order for a party to recover. She pointed out that, in all of the cases she has talked about, they would not be talking about the State's rights under Article 2, that they are always talking about the individual's rights. She further pointed out that, because the Montana Supreme Court has held, in a case decided in 1989, that even where a statute grants a right to recover attorneys fees, that does not apply to the State or political subdivision because the State pays the lawyer his salary, and it would not matter, that the lawyer would be paid that salary anyway, so the State is not entitled to recover fees. She said that the statute would have to be specific in order for the State to recover fees. She encouraged the Committee, if they are inclined to favorably consider this bill, to strike Section 8.

Russ Cater, Chief Legal Counsel, Department of Public Health and Human Services, presented written testimony (**EXHIBIT 9**), and stated that he opposes this bill on behalf of the Department of Public Health and Human Services, as well as on behalf of the

Governor's Office, speaking for other government agencies. He reported that the Governor and, he thinks, the State agencies firmly believe that there is a need to have public participation in government, that this right is in our Constitution and in State statutes, and they also encourage public participation in current statute through the Administrative Rules, as well as the statutes which require that a mailing list be adopted with respect to the adoption of rules. He stated that he wants to convey the point that they do encourage public participation, and there are current statutes which adequately protect the public's rights in participation in government. He indicated that **REP. SIMON** gives the impression that his main concern is for administrative rules, and so, therefore, this bill is necessary to make sure that State agencies are providing notice to the public of administrative rules. He noted that the only problem is that this bill goes way beyond administrative rules, that, if they were just dealing with administrative rules, they could probably delete the first 12 sections, and pass the rest of the bill, that the first 12 sections deal primarily with things other than administrative rules. He reiterated that current law requires mailing lists for administrative rules. He stated that he will agree with **REP. SIMON** that the *Montana Administrative Register* is probably not a real good method of conveying notice to the public about rules that agencies are going to adopt, but pointed out that, if this Committee and the Legislature is intent on making sure that government agencies are giving more notice to the public, they have to realize that there is a cost associated with that. He remarked that some Legislators may not trust agencies to provide the notice and asked, if this is true, why not establish an appropriation within the Secretary of State's office, where administrative rules are promulgated and published, and have the Secretary of State's office publish notice of rules in the paper. He indicated that one of the reasons why the Department does not publish all administrative rules in the paper is that, in many instances, administrative rules are not that controversial. He then noted that they probably are controversial, but the reason that there may not be much objection to the rules is because of the fact that they are doing it because of mandates from the State Legislature, usually because of costs that should be changed in provider rates, or in benefits to recipients, and they are following just an implementation of the Appropriations Act, and that there are other situations where they are adopting rules to comply with mandated Federal laws, and that the Department may not have much choice in these things.

Mr. Cater stated that the main thing in this bill is Sections 2 and 3, that Section 2 defines significant interest to the public. He noted that **REP. SIMON** has attempted to make it less burdensome for the agencies by giving agencies the discretion to determine whether or not it is a controversial issue, but indicated that, perhaps, every decision rendered by the Department of Public Health and Human Services is actually controversial, because it affects a person, usually reducing or increasing their benefits,

or changing a child support obligation, or the amount of child support they receive, and indicated that he would suggest that provision needs to be changed to make sure it is more than just a controversy between an individual, but rather a controversy among a class or groups of people. He stated that Section 3 is probably the most onerous provision of the bill because it sets forth the method by which State agencies are required to establish mailing lists, that it says "Each person submitting oral or written comments to, attending a hearing of, or contacting the agency for any purpose concerning agency actions and decisions must be advised of and given an opportunity to be placed on a list". He indicated that, at first blush, maybe it does not sound too onerous and, perhaps, for some small agencies, perhaps even the Attorney General's office, that would not be too much trouble because they do not deal with that many members of the public during any given day, but pointed out that not all agencies are alike, and that, within the Department of Public Health and Human Services, as indicated in his written testimony, there are tens of thousands of people that they provide benefits to, and tens of thousands of people that their offices deal with on a daily basis, and make contact with their offices. He said that the usually do not keep track of how many phone calls they get, but that they do within the Child Support Enforcement Division, and the administrator indicated that they get 20,000 calls a month for child support obligations. He pointed out that, whether a person is a recipient of child support or paying child support, this is very controversial and important to them, and he is sure they would want to be placed on any kind of list. He noted that it could be argued that, if it is only controversial to one person, all they have to do is provide the notice to that one person, but pointed out that this is not the way the bill reads, that, if someone says they want to be on the notice for all child support issues, that all child support issues are controversial, so they will have to notice all people who want to be on the mailing list, those 20,000 plus people, reiterating that this is just within the Child Support Enforcement Division. He reported that, prior to this hearing, he also spoke with the Chief Counsel for the State Fund, who indicated that, in their claims unit or information services unit, or something of that sort, they receive between 10,000 and 14,000 calls a month, and indicated they are talking about developing mailing lists that will have hundreds of thousands of people, which will definitely increase the cost. He noted that, if the Legislature is willing to pay for it, fine, but he does not see a fiscal note attached to this bill, nor any attempt in the Appropriations Committee to allow for publication or notices to be sent out. He added that he knows that **REP. SIMON** has questioned the fiscal note, and indicated that one of the larger expenses was submitted by the Department of Public Health and Human Services for $2.5 million a year, and that he is sure **REP. SIMON** firmly believes this is an outrageous amount, but pointed out that they have to keep in perspective that, right now, within the Department's Helena offices, alone, they spend $1.4 million

just for postage just to send out the notices they have now, and that asking for another $2.5 million a year is not unrealistic.

Mr. Cater stated that he believes, if they were centering this bill just on rules, he would not have a problem because they already keep a mailing list for rules, and that, when people ask to be put on the mailing list, they are put on a mailing list and are sent notice of rules, but pointed out that, to do it for every decision of the Department, is something else, that it astronomically increases the work load and the cost. He encouraged the Committee to consider the increases in time which would be imposed upon Department staff in doing this, but to come up with another method that they could figure out to give more notice, adding that he firmly believes that current law adequately protects the public, that perhaps what needs to be done is maybe a meeting of Legislators with the Governor to make sure that agencies are doing more to notify the public of important decisions. He indicated that he would not be opposed if the Legislature wanted to establish some kind of fund, but that he would say put it within the Secretary of State's office, or perhaps turn over the mailing list to the Legislative Auditor's office. He added that they do sincerely attempt to put people's names on the mailing list, but that perhaps there are occasions when an individual asks to be put on a mailing list, and it does not happen. He indicated that it is possible he could even be at fault at times, that, if he was asked to put someone on a mailing list as he leaves this room, he would be determined to put that person on that list but, between the time he left here and a half dozen other people contacted him on the way back to the office, he may have forgotten, that it would not be intentional, but is another reason to put some responsibility on the public, that they should put it in writing, or call his secretary rather than ask him in the hall somewhere away from his office.

Questions From Committee Members and Responses:

SEN. DELWYN GAGE referred to Section 8, and asked **REP. SIMON** if it is saying that, regardless of whether or not it is determined that attorneys fees will be paid, if you represent yourself, you get 90% of what the judge would determine a fair attorneys fee to be, or is it saying that, if the judge determines there will be attorneys fees, and you represent yourself, you get 90% of that.

REP. SIMON responded that the word "may" was used on line 27 so that the judge is not forced to provide attorneys fees, adding that if the judge feels that, for the most part, if was a frivolous law suit and maybe an individual prevailed on one small part, he would not have to grant attorneys fees, but if the judge felt that an individual had substantially prevailed and had been defending citizens' rights, that he would award attorneys fees. He then asked if someone would have to hire an attorney, or could they do it themselves, and reported that he filed a law suit against the Department of Commerce in December, without the

benefit of an attorney, in the Montana Supreme Court. He displayed a thick binder, and said that is what it took, that he did it without the use of an attorney, and asked if his time and the time of those people who helped him put it together not worth anything. He pointed out that, under current law, if he hired an attorney to do that and they prevailed, the court could say he is entitled to attorneys fees, and the attorney would get paid but, if he does it himself, he does not get a dime, noting that is a lot of work and a lot of effort went into it. He then indicated that he just put in another bill dealing with another issue and, displaying the file, asked if, in a law suit, is it not reasonable to assume that there should be some mechanism where a court could award fees to an individual. He pointed out that it does not specify "attorney" fees, that if a person does not use an attorney, he is entitled to receive remuneration up to 90% of what the judge would determine would be what an attorney would charge for that job.

SEN. GAGE noted that he understands that, but pointed out that it could be interpreted to mean that, if you represent yourself, you must be awarded 90% of what the judge would determine to be an attorneys fees.

REP. SIMON stated that is not his intention and, if they would like to clarify that, it is fine with him.

SEN. GAGE directed a question to a representative of the Department of Corrections. He pointed out that the fiscal note indicates that, by going from 6 to 12 point type in their advertisements, the cost of these ads would be doubled. Noting that he is not sure if that is true or not, he asked, assuming that it is, if the Department of Corrections is currently spending $622,500 on newspaper advertisements.

Mary Craigle, Research Manager, Department of Corrections, responded that she helped prepare the fiscal note, but that it was put together through a cumulative effort, and she was not the one who came up with that figure. She stated that she would assume it is correct, explaining that they post a number of notices, and they send out mailings continuously, especially in terms of parole hearings, etc., to people who are involved, noting that, with the newspaper articles, she is not exactly sure.

CHAIRMAN HARGROVE pointed out that the fiscal note indicates they can not tell how much effect it have on the County or local governments, but indicated that, according to the bill, cities, towns, municipalities and counties would all be required to do the same thing, and asked **REP. SIMON** if that is correct.

REP. SIMON answered yes.

{Tape: 2; Side: A; Approx. Time: 11:54 a.m.; Comments: End of Tape 2, Side A.}

CHAIRMAN HARGROVE indicated that **REP. SIMON** testified he has been receiving the *Montana Administrative Register* for a while, and asked if he uses it.

REP. SIMON replied yes, that he has, on more than one occasion, including when he was home for the break, that he got a call from an individual who was concerned about an upcoming hearing dealing with the Department of Public Health and Human Services regarding the child care facilities rule hearing. He indicated that he referred to the *Montana Administrative Register*, read the rules and referenced statute, that he gave a copy of each to the constitute, and he then appeared at the rules hearings and testified.

SEN. GAGE asked what the vote on this bill was in the House.

REP. SIMON replied that he could not remember, noting that it got a pretty good margin.

<u>Closing by Sponsor</u>:

REP. SIMON referred to Section 8, and indicated that the Committee may wish to clarify that it is not a requirement, noting that it was not his intent to make it a requirement. He indicated that, if a person takes on this responsibility on their own, rather than hiring an attorney, noting that the work he did would probably have cost him $40,000, if he had hired an attorney. He then reported that he was thrown out of the Montana Supreme Court because he lacked standing, that he brought forth some issues he thought involved the citizens' right to know, and due process of law, but the Supreme Court ruled that a Legislator does not have the authority to bring forth those issues. He added that, very likely, the Supreme Court will see that very same document with another person's name on it, that he knew there was risk and was not willing to risk $40,000 to hire an attorney but that, if he had been successful, it would have been nice to have been rewarded with getting some money back to help pay for the costs involved in preparing that themselves, that a lot of work went into it. He stated that, it seems to him, when somebody does that, they should be compensated for it.

He indicated that the issue of the emergency rules has come up, referring the Committee to page 10, and explained that departments are allowed to adopt emergency rules without public notice prior to the adoption of those rules. He pointed out that the Constitution sets out that the public has the right to participate in government decisions prior to the decisions being made but, in the case of emergency rules, the departments can override the Constitution. He indicated that this section is attempting to say that is an extraordinary power for agencies, and they should have a good reason for doing that, and that, once a rule has been adopted, that decision will be subject to immediate judicial review if a citizen requests that. He added that, as **Ms. Bartos** is aware, there is a law suit in Billings

right now over this issue, that the Department of Commerce adopted emergency rules, that the Department indicated there was imminent danger to public health, safety and welfare, and a need to adopt emergency rules, and that a citizen challenged the sufficiency of their reasons. He reported that the rules were adopted last May, that the hearing still has not been held, that they had a hearing on a Motion to Dismiss, but not on the judicial review, that they have not gotten that far, they are still going back and forth. He pointed out that emergency rules are good for 120 days, but now the judge is saying that the 120 days have gone by, that it is a moot question now because the time has already expired, and they have been adopted as standard rules. He added that there is nothing in statute requiring immediate judicial review, and asked when is this guy going to get a day in court. He then stated that, in the meantime, the City of Billings has acted, using the emergency rules, and made an application to the Department but that, by the time they get a decision, the court is liable to say "Well, the application was made under the emergency rules but, so much time has expired, it's too late to go back and change that decision, so we have to let that decision stand." He said that he does not think that is right, and this is what the bill is all about, to say it is subject to immediate judicial review, it is an emergency, that the Department declared the emergency and are the ones who said there is immediate danger to public health, safety and welfare, so, if it is, why should there not be an immediate review of the sufficiency of their reasons. He stated that he thinks it is very important that this be clarified, and recognized, and pointed out that it says because the exercise of the emergency rules precludes the people's Constitutional right to prior notice and participation in the operation of the government, it constitutes an extraordinary power, requiring extraordinary safeguards against abuse, stating that he thinks that is important because they are being granted an extraordinary power with the emergency rule provision.

REP. SIMON referred to **Mr. Cater's** statement that this should apply only to rules, and indicated that he disagrees. He stated that, certainly, rules are an important part of this, but, citing the example of an action by the Building Codes Bureau, reported that a lot of those actions, such as extending building codes jurisdiction in the cities, took place by printing a small notice in the newspaper which no one read, or understood, if they did, and the Bureau said no one was interested, so the jurisdiction was extended. He stated that they knew it was controversial, that there was a lot of citizen interest, if they had let the people know about it, but they did not want that to happen, so they just printed that little notice and, since no one understood it or, if they read it, it was buried in the legal section, which is why he is asking that the notices be printed on Sunday so that people who are looking for these types of notices would look in the Sunday paper, knowing that is the day these things would appear, and they would know about it. He added that it is more than that, that it is agency actions, pointing out that,

regarding the building codes issues, county residents were being given over to a city government to govern them and their buildings, and it was going to cost those residents potentially lots of money, that they wouldn't have to pay now, that it would affect their ability to build on their property, and who would supervise that, that the use of their property would all change, and certainly it was a matter of significant interest to those citizens. He indicated that, up until recently, the only notice was that small notice in the newspaper, one column, small type, and written in language difficult to understand. He reiterated that is what this bill is all about, to try to stop some of that, when they know that there is a controversial issue. He reported that there was a public hearing in Billings in October, 1985, that 500 people showed up because the citizens went out with leaflets door-to-door. He reported that they only needed 25 people to request a public hearing, but that 250 people requested the hearing, that they again handed out leaflets and, although it was a World Series night, 500 people took time out to come to the public hearing. He then stated that there was another request from the City of Billings for extended jurisdiction, a year later, and the Department did not acknowledge that it was a matter of significant public interest and schedule a public hearing, although they knew about the significance of the public's interest, that they indicated, if there is sufficient public interest by 25 citizens who write in and request a hearing, and that 25 citizens had to write in and request the public hearing. He added that it should have been automatic, that they knew this was controversial, and that there was a lot of significant public interest, and they should have acknowledged that. He reiterated that this is what this bill does, that it tells them when it is a matter of significant public interest. He noted that it is not his intention to affect every little action of the departments and, if the Committee could come up with some amendments to narrow the scope of this, he would be agreeable, but pointed out that, when they are taking significant action which affects a class of citizens, beyond just a single individual, then there should be some public notice so that the people know what is going on and can participate in the decision, participate in their government, that it is their government, it is not our government and it is not their government, it is all of our government, all of the citizens' government, and they should have the right to participate. He said that he appreciates the time the Committee has taken and would urge a do concur recommendation.

SENATE STATE ADMIN.
EXHIBIT NO. 6
DATE 3-13-97
BILL NO. HB389

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0389, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill providing for greater public participation in agency rulemaking and other agency actions, and amending provisions for notice of agency rules and actions.

ASSUMPTIONS:
General Information:

1. This bill requires notice of agency decisions that are of a significant interest to the public. Section 2(4) defines "significant interest to the public " as the undertaking of an agency action or decision that involves a controversial matter, a fiscal impact on a particular class or group of individuals, of significant citizen interest.
2. A fiscal note response was requested from 28 state agencies in order for the OBPP to prepare the fiscal note for HB 389. Most of the smaller agencies responded with minimal or indeterminable impact. Fifteen agencies responded with some impact, or significant impact. In most cases, current accurate data is not available to provide a good estimate, and the bill is too broad to know exactly what agency functions actually apply.
3. Under Fiscal Information below is a brief description of the three main areas of fiscal concern. On the next page is a listing of the agencies fiscally impacted, and the approximate annual cost of each of the three areas, and FTEs, if needed.
4. It should be noted that the fiscal information appearing in this fiscal note is in summary form due to space constraints. The agency detail for the summary information is available in the OBPP.

Fiscal Information:

5. Section 3 requires that each agency create and maintain an interested persons list. The biggest cost in this category is postage, unless FTEs are required to maintain the listing. Most agencies are concerned with the lack of purging directions in the bill, and would appreciate more specifics on who and what.
6. Section 4 requires newspaper notification of agency decisions having a significant interest to the public. For purposes of this bill, most agencies would be using the Sunday rate and the 12 point size. Most agencies currently use the 6 point size. The switch to 12 point automatically doubles notification costs. DPHHS is offering a solution in this area by proposing to send a monthly newsletter to all households in the state, since all their decisions eventually affect all citizens.
7. Increased legal costs are predicted due to: 1) lifting of the 30-day filing requirement and changing to an indefinite period, 2) paying the prevailing plaintiff's legal costs, and 3) an increased number of cases due to greater communication required by this bill. Most agencies did not offer a legal cost impact because of the unavailability of trend caseload, but most agreed the result could be fiscally significant.

(continued)

Dave Lewis 2-5-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRUCE SIMON, PRIMARY SPONSOR DATE

Department of:	Mailing List Impact	Newspaper Ads Impact	Legal Costs	FTEs/ Cost/year
Administration	extensive impact but unable to quantify.			
Agriculture		$23,000		
Commerce	$20,400	717,000	**	
Corrections	137,000	1,243,000		5.00/$110,000
DEQ		251,700		
DNRC	28,000	7.500	**	
Justice	17,000	264,000	**	1.00/$25,500
Labor	**	185,500		
Comm. Of Pol.	5,000	5,000		
PSC		294,000		
Bd. Of Public Ed.	48,000	700		
PHHS	***2,535,000			2.00/$68,800
Revenue			$200,000	
State Fund		15,600		
Transportation	7,600	37,400	**	3.50/$79,500
Totals	$2,798,000	$3,044,400	$200,000	11.50/$283,800

** Agency cannot provide an accurate estimate, but believes the impact could be potentially significant.
***DPHHS has determined that a monthly newsletter mailed to all Montana households would be less expensive than individual mailings and newspaper advertisements.

FISCAL IMPACT:

Expenditures:	FY98 Difference	FY99 Difference
FTE	11.50	11.50
Personal services	283,800	283,800
Operating expense	6,042,400	6,042,400
Total	6,326,200	6,326,200
Funding:		
General fund (01)	$2,789,300	2,789,300
State special (02)	1,472,400	1,472,400
Federal special (03)	2,064,500	2,064,500
Total	$6,326,200	$6,326,200

Note: The numbers presented are conservative due to the agencies noted above that were unable to provide a reasonable estimate.

Net Impact on Fund Balance: (Revenue minus expense)		
General Fund (01)	(3,701,900)	(3,701,900)

EFFECTS ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The effects cannot be estimated with any degree of accuracy, but could be potentially significant statewide based on page 3, Section 4 amendments to 2-3-104, MCA.

TECHNICAL NOTES:
1. Section 10, by striking "section 9" from existing law, would require payment of attorney's fees in all cases brought under any section of Article II of the Montana Constitution if the state does not prevail. Frivolous suits may result. Moreover, the title of the code section is unchanged by the bill and it therefore appears that the provision is still intended to apply only to cases brought to enforce the right to know provisions of the constitution. This should be clarified in the bill in order to better determine the fiscal impact.
2. Section 12(b) is erroneous in that the notices must be published in the "MAR", not the "ARM".

SENATE STATE ADMIN.
EXHIBIT NO. 7
DATE 3-13-97
BILL NO. HB 389

MONTANA DEPARTMENT OF COMMERCE

Director's Office
1424 9th Avenue PO Box 200501
Helena, MT 59620-0501

Phone: (406) 444-3494
FAX: (406) 444-2903
TDD: (406) 444-2978

AMENDMENTS
HOUSE BILL 389
INTRODUCED BY SIMON

1. Page 2, line 14.
Following: "TO BE CONTROVERSIAL"
Insert: "between two or more groups of citizens"

2. Page 2, line 15.
Following: "of individuals"
Strike: ", or significant citizen interest."
Insert: "."

3. Page 2, line 24.
Following: "contacting the agency"
Insert: "in writing"

4. Page 2, line 24.
Following: "purpose concerning"
Insert: "the subject or subjects on which"

5. Page 2, line 24 and 25.
Following: "agency actions"
Strike: "and decisions"
Insert: "are proposed"

6. Page 2, line 26 and 27.
Following: "decision relating to"
Insert: "the subject"

7. Page 2, line 27.
Strike: "in AS TO"
Insert: "in"

8. Page 3, line 14.
Following: "after appropriate"
Strike: "and adequate"

9. Page 3, line 19 and 20.
Following: "AN advertisement"
Strike: "must be printed in at least 12-point type and"

10. Page 5, lien 28 through line 30
Following: "~~a matter of course~~"
Strike: remainder of line 28 through line 30 in their entirety

11. Page 6, line 17.
Following: "agency rule,"
Strike: "the issuance of a license or order,"

12. Page 6, line 23 through line 25.
Following: a person"
Strike: "~~known to the committee or to an agency to have~~ WHO HAS demonstrated in any way TO THE AGENCY an interest concerning agency actions or other agency administrative matters AND"
Insert: "who has submitted oral or written comments to the agency on a subject or subjects within the agency's jurisdiction, or who has otherwise contacted the agency in writing to request notice of agency action on a particular subject or subjects, or"

13. Page 7, line 25
Following: "TO BE CONTROVERSIAL"
Insert: "between two or more groups of citizens"

14. Page 7, line 26.
Following: "of individuals"
Strike: ", or significant citizen interest."
Insert: "."

15. Page 8, line 11 and 12.
Following: "clear English"
Strike: line 12 in its entirety
Insert: "."

16. Page 10, line 8.
Following: "subject to"
Strike: immediate

17. Page 10, line 8.
Following: judicial review
Strike: "upon petition by an person"

18. Page 11, line 22.
Following: "in ~~substantial~~"
Insert: "substantial"

19. Page 11, line 23.
Following: "2-4-302"
Strike: "or"
Insert: ","
Following: "2-4-303"
Insert: ", 2-4-306,"

Following: "this section"
Strike: "."
Insert: ","
Following: ". and unless"
Strike: "2-4-306 is complied with"

Contact: Annie M. Bartos, Chief Legal Counsel
444-3553

SENATE STATE ADMIN.
EXHIBIT NO. 8
DATE 3-13-97
BILL NO. HB389

Part 7
Payment of Costs by Governmental Entities

Part Cross-References

State liability exposure and insurance coverage, Title 2, ch. 9.

Governmental entities not required to give security, 25-1-402.

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

25-10-701. Public officers not to be personally taxed. No officer prosecuting or defending as provided in 25-10-405 shall be taxed with costs or damages, but such costs or damages, if any, shall be taxed to the state, county, or municipality, as the case may be.

History: En. Sec. 564, p. 150, Cod. Stat. 1871; re-en. Sec. 504, p. 173, L. 1877; re-en. Sec. 504, 1st Div. Rev. Stat 1879; re-en. Sec. 517, 1st Div. Comp. Stat. 1887; en. Sec. 1874, C. Civ. Proc. 1895; re-en. Sec. 7177, Rev. C. 1907; re-en. Sec. 9810, R.C.M. 1921; amd. Sec. 1, Ch. 9, L. 1925; re-en. Sec. 9810, R.C.M. 1935; R.C.M. 1947, 93-8626(part).

Cross-References

Immunization and indemnification of public employees, 2-9-305.

25-10-702. Payment of costs by state. When the state is a party and costs are awarded against it, they must be paid out of the state treasury.

History: En. Sec. 1878, C. Civ. Proc. 1895; re-en. Sec. 7181, Rev. C. 1907; re-en. Sec. 9814, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1038; re-en. Sec. 9814, R.C.M. 1935; R.C.M. 1947, 93-8630.

Cross-References

Payment of judgments against the state, 2-9-315.

25-10-703. Payment of costs by county. When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

History: En. Sec. 1879, C. Civ. Proc. 1895; re-en. Sec. 7182, Rev. C. 1907; re-en. Sec. 9815, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1039; re-en. Sec. 9815, R.C.M. 1935; R.C.M. 1947, 93-8631.

Cross-References

Payment of judgments against governmental entities, 2-9-316.

Judgments against county or county officers, 25-13-205.

25-10-704 through 25-10-710 reserved.

25-10-711. Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith. (1) In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court if:

(a) he prevails against the state, political subdivision, or agency; and

(b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) Costs may be granted pursuant to subsection 1 notwithstanding any other provision of the law to the contrary.

History: En. Sec. 1, Ch. 402, L. 1979.

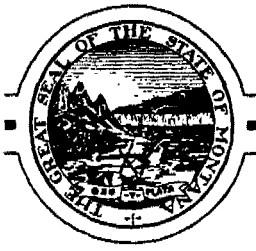
Cross-References

Government entities not required to give security, 25-1-402.

Judgments against county or county officer, 25-13-205.

Garnishment of public officers, 25-13-504.

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

PO BOX 4210
HELENA, MONTANA 59604-4210

SENATE STATE ADMIN.
EXHIBIT NO. 9
DATE 3-13-97
BILL NO. HB 389

Testimony of Russell E. Cater
Chief Legal Counsel
Department of Public Health & Human Services
HOUSE BILL No. 389--Third Reading as Amended
(Public Participation in Agency Actions)

Public participation in government is important. It is required by the Montana Constitution and State statutes. The public should be given notice of agency actions that are of significant interest to the public. Agencies should encourage public participation.

House Bill No. 389, however, will require significant financial cost to all state and local government agencies. HB 389 will require significant added burdens and time compiling mailing lists and distributing notices to people that have in some way contacted an agency.

Requiring agencies (which by definition includes local governments) to create extensive "interested persons list" is not the way to ensure public participation. HB 389 requires agencies to create a list of persons that submit oral or written comments, attend hearings, or contact the agency. Agencies would be required to give individual notices to these persons of agency actions that involve controversial matters, or decisions that have a fiscal impact on a group of individuals.

Section 4 indicates the means by which an agency can comply with the required notice provisions. For most agencies, costly newspaper advertisements will be the only means of complying with this section.

Hundreds of people contact the Department of Public Health and Human Services on a daily basis. There are hundreds of different programs within DPHHS. These programs range from issues involving welfare benefits, child abuse and neglect, child support enforcement, licensing and regulations of hotels, motels, swimming pools, trailer parks, food establishments, daycare facilities, etc. DPHHS issues over 10,000 licenses per year. There are over 1,000 written contracts with DPHHS. This does not include the 8,000 medical providers that provide services under written agreements with the Department for its Medicaid program. DPHHS provides services directly or through contracts to over 100,000 Montanans. Tens of thousands of people contact the Department monthly. In fact, the Child Support Enforcement Division of DPHHS receives over 20,000 calls per month. HB 389 section three requires agencies to give notice to each person on the

required mailing list.

Agencies provide notice as required by current law for truly significant agency actions. It is also incumbent upon citizens, however, to do their part in becoming informed of actions to be taken by government agencies. The DPHHS Helena Offices spend in excess of $1.4 million per year for postage alone in notifying the public of agency actions or decisions. (That amount does not include printing costs or labor.) HB 389 requirements will significantly increase mailing, printing, advertising and labor costs.

House Bill 389 requires agencies to develop procedures and notice requirements that will cost far more than the benefit to the public. Agencies should be held accountable for notifying the public and encouraging the public to participate in important agency actions. They should not, however, be forced to create mailing lists or provide notices that are not necessary.

HB 389 permits attorney's fees for the prevailing party. Non-attorneys are entitled to 90% of what an attorney would charge if they prevail. Non-attorneys (such as prison inmates) do not have the business overhead associated with a law practice, e.g. office space and equipment, secretaries, etc. These provisions, especially the fee allowance for non-attorneys, will encourage frivolous lawsuits.

House Bill 389 requires unnecessary publication in newspapers of all agency rules. DPHHS issued 47 rule notices during 1996. Thirty five hearings were scheduled. Only 11 hearings had public attendance. Of those hearings, 15 people were present at one, 7 at another but the remaining had only one or two people in attendance. Many DPHHS hearings do not attract much attention because they are for the purpose of enacting mandated federal laws or adjusting payments as appropriated by the Montana legislature. (HB 389's required rule notice is unclear because the reference contained on page 8, line 29 appears to be wrong.)

Public participation in local and state government is essential. House Bill 389, however, requires unnecessary and very costly actions which cannot be justified for every agency action that falls within the definition of section 2(2) and (4). For the above stated reasons, it is recommended that you vote against House Bill 389.

Russell E. Cater

Russell E. Cater
Chief Legal Counsel
Department of Public
Health & Human Services

MONTANA SENATE
1997 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE 3-13-97

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
DEL GAGE	✓		
FRED THOMAS	✓		
BILL WILSON	✓		
KEN MESAROS, VICE CHAIRMAN	✓		
DON HARGROVE, CHAIRMAN	✓		

DATE 3-13-97

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: HB 521 HB 534
HB 389

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Mike Cronin	Dept Corrections	HB 389		✓
Mary Craigle	" "	HB 389		—
Herb Richards	Self	HB 534	✓	
Carl Schweitzer	MT Const Ass'n	HB 534	✓	
Kelly Jenkins	Public Employees' Retirement Bd	HB 534	Informational	
Dean Bjerke	Diamond Const	HB 534	✓	
Jeff Miller	DOR (w) amend -	HB 521	✓	
Russ Cater	DPHHS - State Agencies	HB 389		✓
Annie Bartos	DOC	HB 389		✓
Beth Baker	Dept of Justice	389		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 14, 1997, at 9:00 a.m., in Room 331.

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
HEARING(S) & DATE(S) POSTED: HB 568, 3/11/97;
HJR 6, 3/11/97
Executive Action: HB 568, BCIAA; HJR 6, A;
HB 193, BCIAA;
HB 468, BCIAA; SR 13, A

HEARING ON HB 568

Sponsor: **REP. KARL OHS, HD 33, HARRISON**

Proponents: **Brian Cockhill, Director, Montana Historical Society**
REP. GEORGE HEAVY RUNNER, HD 85, BROWNING
Don Peterson, President Lewis and Clark Heritage Foundation
Arnie Olsen, Administrator, Parks Division, Department of Fish, Wildlife and Parks
Matthew Cohn, Administrator, Travel Montana

Opponents: **None**

SEN. WILSON stated that placement of the plaque would be determined at a later date. **SEN. BROOKE** said the Capitol Complex Renovation Committee would review where the placement would be.

Vote: The motion **CARRIED UNANIMOUSLY. SEN. BROOKE** will carry HJR 6 on the Senate floor.

EXECUTIVE ACTION ON SR 13

Motion: **SEN. MESAROS** moved that SR 13 be **ADOPTED.**

Discussion:

SEN. GAGE stated he was very impressed with General Pendergast.

SEN. BROOKE said that **General Pendergast's** presentation of the Department of Military affairs was impressive.

Vote: The motion **CARRIED UNANIMOUSLY.**

COMMITTEE DISCUSSION - HB 389

CHAIRMAN HARGROVE pointed out that a lot of amendments have been proposed for HB 389, and suggested to **David Niss** that he wait until the Committee has had time to look at the proposed amendments before spending a lot of time on them since it is his feeling the bill probably should not go anywhere. He indicated that he is a little cynical but, as far as public information and the openness of government, he doubts if there is any place in the world that has a more open government than Montana, that there is no place where people have more information. He reported that, in the last session, in Local Government Committee, a bill was presented which would remove the requirement to publish county budgets in the newspapers, that the bill passed, and all of the testimony was that no one ever reads them. He added that the only people who opposed the bill were the newspapers, who, obviously, make money from those ads. He noted that he was impressed that there were a lot of people who said they were spending a lot of money, and this information is already available to the public. He said that his observation has been that meetings are held over a period of time on an issue, that notices are put out, and a lot of money is spent but, when a meeting occurs, no one shows up until the final meeting, and most of that effort is without value. He indicated to the Committee that he would like some discussion, and asked if they think **Mr. Niss** should go to the trouble of going through all of the amendments.

SEN. GAGE reminded the Committee that, last session, there was a subdivision zoning bill in Local Government Committee, where they were using the emergency rules, that the bill finally was tabled and the sponsors were invited to return this session with a bill to address the issue. He indicated that he likes the emergency rule section of this bill, and would like to see the Committee

consider amending everything else out of the bill, leaving the emergency rules section in, noting that is Section 11. He explained this is because of those conflicts and the fact that some of these people are adopting, according to the testimony, emergency rules and then letting it go past the time, without having hearings, and that this is an extraordinary power.

SEN. THOMAS stated that is a good point. He indicated that he agrees with **SEN. GAGE** on that section, but pointed out that the first six amendments deal with Section 3, on page 2 of the bill, and, noting that he is not an expert on the rule process, said that it seems to him that the legislative process is more open and conducive to the public than the rulemaking process, which is kind of behind closed doors. He noted that he should not say that, but it seems to him that it is not as open and public as at least this process is. He said that they are always complaining about those rules, and for good reason in large part, reporting that a bill, which was taken off second reading recently, had to do with prevailing wage and had rulemaking authority in it. He indicated that this bill almost snuck through this whole session under the guise of the consensus bill, that it really was a consensus among a group of like parties and, although it does not relate exactly to this subject, in the bill was rulemaking authority that is probably expansive to the subject matter that they may look at in the session, noting that this area of rulemaking and disclosure, and inviting people to the table to work on it, and be noticed of it, he thinks is very important.

CHAIRMAN HARGROVE agreed that it is very important, and reported that there are two bills addressing that, that one would be to inform the sponsor, that this would be using representative government on rulemaking authority. He indicated the other one is by **SEN. LOREN JENKINS's** bill dealing with giving the Administrative Code Committee some power to do that, noting that it may be vetoed again, that it was last time, pointing out that it failed an override by one vote, which is interesting, stating that it could go this time. He said that he is not real enamored with it but, with this bill, it might become a little more active, rather than just be exception, as it is now. He remarked that, to put himself in the position of the State engineer who designs highways, he has a room full of blueprints, and people coming in all day, that he is making up these rules as he goes along and trying to fit them into the law that he has in his mind, and he writes them down. He indicated he is not sure how, or really at what point that rulemaking process would be eliminated but, from the standpoint of time, in his opinion, that $6 million is probably (the rest of the sentence was garbled).

SEN. VIVIAN BROOKE said that she thinks this always goes to the dilemma that this is a citizen legislature, and the fact that, during the interim, they are on interim committees, they respond to constituents' calls or invitations, and are involved in their communities and jobs. She indicated that she feels she would have to be a professional legislator before she could really

involve herself in that kind of administrative work and oversight, that she would like to, but there is just not time to provide the public oversight for rulemaking, noting that they do the best they can given the circumstances, with the distances in the State, and with the time available. She reminded the Committee that **REP. BRUCE SIMON** testified about who gets the *Montana Administrative Register*, and pointed out that it must be in the libraries and, if not, she would think they would want to make sure it is in the libraries for the public, and it could be advertised more that the public could avail themselves of that, or even in the city/county governmental areas, public access to that, rather than having that subscription go out to more people.

CHAIRMAN HARGROVE indicated that, to satisfy the question, Sections 11, 12 and 13 could be left in, noting that Section 13 deals with rulemaking and the emergency process, and does not address any of the publicity, which is, he thinks, addressed in everything else.

SEN. DELWYN GAGE indicated that, in his opinion, some of this has got to be left to the public to be responsible, as well. He pointed out that, if someone is that concerned about something, they have to know that it went through the session and, if nothing else, they should write to that division requesting that, when they are ready to do rules on an issue, they be notified personally. He noted that he thinks they would be notified, that he has confidence enough in the State agencies and does not think they are trying to sneak things through, and that he believes the bill requiring notification to sponsors will take care of 99% of them.

SEN. KEN MESAROS stated that he agrees, that he thinks that is something of an issue by this administration, that it has now been codified, and he thinks it is a major improvement. He referred to Section 11, regarding emergency rulemaking that **SEN. GAGE** was speaking to, on lines 7 and 8, page 10, "sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to", noting that the word "immediate" was inserted, and he continued reading "judicial review", then noted that "upon petition by any person" was inserted. He stated that would mean any one person, noting that it was brought out in testimony, and indicated that he would say that a petition by any one person is too broad. **SEN. GAGE** said they could include language about numbers of persons.

CHAIRMAN HARGROVE suggested leaving it the way it was, "subject to judicial review".

SEN. GAGE suggested "expiration of the", noting that, as he recalls, after 120 days these emergency rules become permanent. **David Niss** indicated that it is the reverse, that he thinks the agency has to go back to adopt it. **CHAIRMAN HARGROVE** asked if 120 days is the trigger. **SEN. GAGE** indicated they could say something to the effect of "prior to the expiration of".

Mr. Niss referred the Committee to line 30 on page 9, "The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302", explaining that means a permanent rule, "is not precluded.", pointing out that it actually expires.

SEN. GAGE indicated that they could put something in to the effect that, prior to the expiration of the 120 days, or judicial review within a period not longer than 120 days.

Mr. Niss reported that, if a person can file the petition within 120 days, that certainly would not be immediate, so it is a choice of one or the other.

SEN. GAGE noted that he was trying to get away from the "immediate", that it would be impossible with some of these real busy judicial districts.

CHAIRMAN HARGROVE said that his sense of that is that the judicial review is not to necessarily make sure that this is being done exactly, that it is for lessons learned, to make sure it was done right in keeping the train on track. He added that he guesses that they might, in some cases, want a review while the activity is still in the emergency stage.

SEN. GAGE stated that he does not have a problem with just leaving it the way it is, just striking the word "immediate" and "upon petition by any person". He added that he does like the fact that it indicates that this pretty potent power, that it is an exceptional power.

CHAIRMAN HARGROVE asked **Mr. Niss** to prepare an amendment that would strike all of the new language up to Section 11, that he thinks they should leave Sections 12 and 13, as well, making that one change in Section 11.

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 17, 1997, at 10:00 a.m., in Room 331

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 90, HB 91, HB 496 3/11/97
Executive Action: HB 389 BCIAA; HB 521 BCIAA

HEARING ON HB 496

Sponsor: **REP. GARY FELAND, HD 88, Shelby**

Proponents: **Judy Richman, Employee Toole County Hospital and Nursing Home**
Jerry Morasko, Administrator Toole County Hospital
Jim Ahrens, President of Montana Hospital Assoc.

Opponents: **Linda King, Public Employers Retirement Board**

Opening Statement by Sponsor:

REP. GARY FELAND, HD 88, Shelby, introduced HB 496, which allows employees of county hospitals and rest homes in certain classes of counties to become exempt from PERS.

SEN. WILSON asked if this bill would increase revenues? **Mr. Miller** stated this will be one more tool. This is a subjective method of weighing intent.

Motion: **SEN. GAGE** moved to **AMEND HB 521.**

Discussion:

SEN. GAGE explained that he would strike the new language on lines 19 and 20.

Vote: The motion to **AMEND HB 521 CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. BROOKE** moved that **HB 521 BE CONCURRED IN AS AMENDED.** The motion **CARRIED UNANIMOUSLY.**

{Tape: 1; Side: B; Approx. Time: 11:41 a..m.; Comments: None.}

EXECUTIVE ACTION ON SR 12

Motion/Vote: **SEN. THOMAS** moved that **SR 12 BE ADOPTED.** The motion **CARRIED UNANIMOUSLY.**

COMMITTEE DISCUSSION - HB 496

Steve Browning remarked that the question was raised about county hospitals and nursing homes. Both Sheridan and Ennis are hospital districts, but are not county districts. The employees of those facilities are not in PERS. There is relatively little impact. Maybe six or so may be affected. Ennis is non-profit, which became a hospital district because they get a three-mill levy. There are about 14 hospital districts in the state.

EXECUTIVE ACTION ON HB 389

Amendments: HB038901.adn (**EXHIBIT 3**)

Discussion:

CHAIRMAN DON HARGROVE pointed out that this bill by **REP. BRUCE SIMON** has about $6 million worth of public notice requirements with regard to rulemaking, and that there have been a number of amendments. He stated that the emergency rules is probably appropriate and, if that is, it seems that the changes to Sections 12 and 13 are still good, and that he believes that the amendments would delete everything except Sections 11, 12 and 13. **David Niss** stated that he has taken out Section 12, also.

CHAIRMAN HARGROVE asked **Mr. Niss** to explain the amendments. **Mr. Niss** reported that the amendments change the title and strike everything down to page 9, line 23, and leaves in current Section 11, that, with the amendment, it would now be Section 1,

Emergency or Temporary Rules. He indicated that, on page 10, the amendment also returns that middle sentence to current existing language, that it strikes the new language "immediate" and new language "upon petition by any person." He added that it leaves in all the rest of the new language on lines 8 through 12, that it strikes all of current Section 12. He explained that Section 12 is being stricken from the bill because he understood **SEN. GAGE's** intent was to take out everything but the emergency rule provisions, and current Section 12 does not apply to emergency rules. He then indicated that the big change is in subsection (8) at the bottom of page 11, lines 27 through 30.

CHAIRMAN HARGROVE asked, when he says strike Section 12, if he means current law, or just the changes.

Mr. Niss replied that he is taking that section out of the bill, that it is not a repeal, but is being stricken from the bill. He further explained that this is being done because the new language, which is mostly in lines 29 and 30, is not connected to emergency rulemaking, that it has a different purpose than the changes that **SEN. GAGE** wanted to accomplish in deleting the rest of the bill. He added that he has left in Section 13 because the language, particularly lines 21 through 27 on page 12, do concern emergency rulemaking and the language provides a new date for the effective date of an emergency rule. He explained that, currently, in the notice filed with the Secretary of State's office, and published in the *Montana Administrative Register*, agencies can state only an effective date following publication of the *Montana Administrative Register*, and the new language would allow them to state in the *Montana Administrative Register* that it is effective upon filing with the Secretary of State, which is prior to the time that most people would see the notice in the *Montana Administrative Register*, and agencies could already have rule effective at that time, which they can not do now.

Motion: **SEN. GAGE** moved that **HB038901.adn BE ADOPTED.**

Discussion:

SEN. GAGE stated that he does not have a problem with Section 12 not being in the bill, and indicated that he would agree to segregating the amendments.

Mr. Niss stated that Section 12 is stricken in the amendments, that it would be stricken unless the Committee wanted to change one of the paragraphs of the amendments.

CHAIRMAN HARGROVE asked **SEN. GAGE** if he will move the amendments as they are. **SEN. GAGE** responded he will move them as they are. He added that he is assuming these amendments will be rejected in the House.

CHAIRMAN HARGROVE responded that he spoke with **REP. BRUCE SIMON**, and told him the bill would be pretty unrecognizable, and had the feeling that he expected it, although he did not really say. He added that he thinks **REP. SIMON** is just happy to have something survive so that he does not lose another bill, but that this may not be true and he does not know. He noted that there may be a Conference Committee on this bill.

Mr. Niss reported there is a very interesting history to this, that he heard about it in talking with another staff person. He indicated that this bill was actually tabled in the House by an extremely strong vote, and was pulled out of committee by the floor, and the way he interprets that is that the floor voted the way that they did because they did not hear all of the testimony in opposition in the House committee.

Vote: The motion to **ADOPT HB038901.adn CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. THOMAS** moved that **HB 389 BE CONCURRED IN AS AMENDED.** The motion **CARRIED** with **SEN. THOMAS, SEN. GAGE, SEN. MESAROS AND CHAIRMAN HARGROVE IN FAVOR**, and **SEN. THOMAS AND SEN. BROOKE OPPOSED.**

COMMITTEE DISCUSSION - HB 90

SEN. THOMAS offered a motion that HB 90 be concurred in. **SEN. GAGE** explained that funding could be handled by charging so much per member on payroll, to fund the other seven, or they could have a payroll tax. **SEN. THOMAS** was not in favor of a payroll tax, and withdrew his motion.

MONTANA SENATE
1997 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE 3-12-97

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
DEL GAGE	✓		
FRED THOMAS	✓		
BILL WILSON	✓		
KEN MESAROS, VICE CHAIRMAN	✓		
DON HARGROVE, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

March 18, 1997

MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill 389 (third reading copy -- blue), respectfully report that House Bill 389 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Don Hargrove, Chair

That such amendments read:

1. Title, lines 5 through 7.
Strike: "PROVIDING" on line 5 through "PROVISIONS;" on line 7

2. Title, lines 8 and 9.
Strike: "PROHIBITING" on line 8 through "NECESSITY;" on line 9

3. Title, lines 9 through 10.
Strike: "SECTIONS" on line 9 through "2-4-302," on line 10
Insert: "SECTION"

4. Title, line 11.
Strike: "2-4-305,"

5. Page 1, line 15, through page 9, line 23.
Strike: sections 1 through 10 in their entirety
Renumber: subsequent sections

6. Page 10, line 8.
Strike: "<u>immediate</u>"
Strike: "<u>upon petition by any person</u>"

7. Page 10, line 20, through Page 11, line 30.
Strike: section 12 in its entirety
Renumber: subsequent section

-END-

Amd. Coord.
Sec. of Senate

Sen. Gage
Senator Carrying Bill.

SENATE
591213SC.SRF
HB 389

SEQ NO. 868
REVISION 0

MAR 24 1997
1:39 PM

MONTANA SENATE
55th LEGISLATURE
1997 REGULAR SESSION

HB 389
SIMON
THIRD READING
BE CONCURRED IN

PRESIDING: AKLESTAD

49 YEAS 1 NAYS 0 NOT VOTING 0 EXCUSED 0 PAIRED

Y	BAER	Y	HERTEL
Y	BARTLETT	Y	HOLDEN
Y	BECK	Y	JABS
Y	BENEDICT	Y	JENKINS
Y	BISHOP	Y	JERGESON
Y	BROOKE	N	KEATING
Y	BURNETT	Y	LYNCH
Y	CHRISTIAENS	Y	MAHLUM
Y	COLE	Y	MCCARTHY
Y	CRIPPEN	Y	MCNUTT
Y	CRISMORE	Y	MESAROS
Y	DEPRATU	Y	MILLER
Y	DEVLIN	Y	MOHL
Y	DOHERTY	Y	NELSON
Y	ECK	Y	SHEA
Y	EMERSON	Y	SPRAGUE
Y	ESTRADA	Y	STANG
Y	FOSTER	Y	SWYSGOOD
Y	FRANKLIN	Y	TAYLOR
Y	GAGE	Y	THOMAS
Y	GLASER	Y	TOEWS
Y	GROSFIELD	Y	VANVALKENBURG
Y	HALLIGAN	Y	WATERMAN
Y	HARGROVE	Y	WILSON
Y	HARP	Y	AKLESTAD

Y=YEA N=NAY E=EXCUSED -=ABENT OR NOT VOTING
YP=PAIRED YEA NP=PAIRED NAY Y*=CENTRAL YEA N*=CENTRAL NAY

HOUSE BILL NO. 389

INTRODUCED BY SIMON, ELLIS, GROSFIELD, GRINDE, BAER, BOHLINGER, SLITER, MCCANN, PECK, OHS, KNOX, BEAUDRY, DEBRUYCKER, HARP, COCCHIARELLA, BOHARSKI

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING AND OTHER AGENCY ACTIONS; AMENDING PROVISIONS FOR NOTICE OF AGENCY RULES AND ACTIONS; DEFINING TERMS; CLARIFYING EXISTING PROVISIONS;~~ STRENGTHENING THE REQUIREMENTS FOR AN EMERGENCY RULE; ~~PROHIBITING THE USE OF AN ADOPTION NOTICE TO CURE DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY;~~ AND AMENDING ~~SECTIONS 2-3-101, 2-3-102, 2-3-103, 2-3-104, 2-3-105, 2-3-112, 2-3-114, 2-3-203, 2-3-213, 2-3-221, 2-4-102, 2-4-302,~~ SECTIONS 2-4-303~~, 2-4-305,~~ AND 2-4-306, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 2-3-101, MCA, is amended to read:~~

~~"**2-3-101. Legislative intent.** The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency and that this part must be liberally construed to achieve that purpose."~~

~~**Section 2.** Section 2-3-102, MCA, is amended to read:~~

~~"**2-3-102. Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Agency" means any a board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:~~

~~(a) the legislature and any or a branch, committee, or officer thereof of the legislature;~~

~~(b) the judicial branches and any branch or a committee or officer thereof of the judicial branch;~~

~~(c) the governor, except that an agency is not exempt merely because the governor has been designated as a member thereof of the agency; or~~

~~(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.~~

~~(2) "Agency action" means the whole or a part of, or the equivalent or denial of, the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof an agency decision that is of significant interest to the public.~~

~~(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:~~

~~(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or~~

~~(b) declaratory rulings as to the applicability of any statutory provision or of any rule.~~

~~(4) "Significant interest to the public" means the undertaking of an agency action or decision that involves a controversial matter THAT THE AGENCY KNOWS TO BE CONTROVERSIAL, a SIGNIFICANT fiscal impact on a particular class or group of individuals, or significant citizen interest."~~

~~**Section 3.** Section 2-3-103, MCA, is amended to read:~~

~~"**2-3-103. Public participation -- governor to insure ensure guidelines adopted.** (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. Each agency shall create and maintain an interested persons list CONTAINING THE SUBJECT OR SUBJECTS IN WHICH EACH PERSON ON THE LIST IS INTERESTED. Each person submitting oral or written comments to, attending a hearing of, or in any way contacting the agency for any purpose concerning agency actions and decisions must be ADVISED OF AND GIVEN AN OPPORTUNITY TO BE placed on the list by the agency and given notice of each intended or proposed agency action and each agency decision relating to matters in AS TO which the person has expressed an interest in the person's contacts with the agency REQUESTED NOTICE.~~

~~(2) The governor shall insure ensure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs, which The guidelines shall must~~

provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall must be adopted as rules and published in a manner which that may be provided to a member of the public upon request."

Section 4. Section 2-3-104, MCA, is amended to read:

"**2-3-104. Requirements for compliance with notice provisions.** An agency shall be considered to have complied complies with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(2) A PROCEEDING IS HELD AS REQUIRED BY THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND NOTICE OF THE PROCEEDING IS EITHER POSTED ON THE STATE ELECTRONIC BULLETIN BOARD OR IS PUBLISHED IN A PRESS RELEASE ISSUED BY THE AGENCY;

(3)(2)(3) a public hearing, after appropriate and adequate notice is given, is held pursuant to any other a provision of state law or a local ordinance or resolution; or

(4)(3)(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement A NEWS STORY OR an advertisement giving notice of opportunity to be heard concerning the decision sufficiently prior to a final decision to permit public comment on the matter. The AN advertisement must be printed in at least 12-point type and must comply with the notice requirements of 2-4-302(1). If the newspaper has a Sunday edition, the advertisement must be in that edition."

Section 5. Section 2-3-105, MCA, is amended to read:

"**2-3-105. Supplemental notice by radio or television.** (1) Any An official of the state or any of one of its political subdivisions who is required by law to publish any a notice required by law may, and is encouraged to, supplement such the publication by a radio or television broadcast, or both, of a summary of such the notice or by both of such broadcasts when if in his the official's judgment the public interest will be served.

(2) The When a summary of such a notice shall only be read with no reference to any person by name then is broadcast, a candidate for political office may not be referred to.

~~(3) Such announcements shall be made A summary may be broadcast only by duly employed personnel of the station from which such the broadcast emanates.~~

~~(4) Announcements An announcement by a political subdivisions subdivision may be made only by stations a station situated within the county of origin of the legal notice unless no a broadcast station exists does not exist in such that county, in which case announcements the announcement may be made by a station or stations situated in any county other than the county of origin of the legal notice."~~

~~**Section 6.** Section 2-3-112, MCA, is amended to read:~~

~~"**2-3-112. Exceptions.** The provisions of 2-3-103 and 2-3-111 do not apply to:~~

~~(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;~~

~~(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of to file a lawsuit in a court of law or becoming to become a party to an administrative proceeding; or~~

~~(3) a decision involving no more than a ministerial act."~~

~~**Section 6.** Section 2-3-114, MCA, is amended to read:~~

~~"**2-3-114. Enforcement.** The district courts of the state have jurisdiction to set aside or declare void an agency decision under this part upon petition made within 30 days of the date of the decision of any by a person whose rights have been prejudiced THAT IS FILED WITHIN 30 DAYS AFTER THE DATE OF THE DECISION OR WITHIN 30 DAYS AFTER THE DECISION BECOMES PUBLIC, WHICHEVER IS LATER."~~

~~**Section 8.** Section 2-3-203, MCA, is amended to read:~~

~~"**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.~~

~~(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the~~

~~public.~~

~~(3) Provided, however, the~~ The ~~presiding officer of any~~ a ~~meeting subject to subsections (1) and (2) may close the meeting during the time~~ that ~~the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains, and, in that event, the meeting must be open.~~

~~(4) (a) However, except~~ Except ~~as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.~~

~~(b) A meeting may not be closed to discuss strategy to be followed in litigation involving the enforcement or preservation of a constitutional right of the people or in which the only parties are public bodies or associations described in subsections (1) and (2).~~

~~(5) Any~~ A ~~committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business which~~ that ~~is within the jurisdiction of that agency is subject to the requirements of this section."~~

~~**Section 7.** Section 2-3-213, MCA, is amended to read:~~

~~"**2-3-213. Voidability.** Any~~ A ~~decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision. AN ACTION TO INVALIDATE THE DECISION MUST BE COMMENCED WITHIN 30 DAYS AFTER THE DATE OF THE DECISION OR WITHIN 30 DAYS AFTER THE DECISION BECOMES PUBLIC, WHICHEVER IS LATER."~~

~~**Section 8.** Section 2-3-221, MCA, is amended to read:~~

~~"**2-3-221. Costs and attorney fees to plaintiff PARTY in certain actions to enforce constitutional right to know.** A plaintiff PARTY who prevails in an action brought in district court to enforce his the plaintiff's PARTY'S rights under Article II, section 9, of the Montana constitution may must MAY be awarded his costs and reasonable attorneys' attorney fees as a matter of course. A prevailing plaintiff PARTY who is not represented by an attorney must be awarded 90% of what the judge determines would be a reasonable attorney fee if the plaintiff PARTY had been represented by an attorney."~~

1 ~~**Section 9.** Section 2-4-102, MCA, is amended to read:~~

2 ~~"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:~~

3 ~~(1) "Administrative code committee" or "committee" means the committee provided for in Title 5,~~

4 ~~chapter 14.~~

5 ~~(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that~~

6 ~~the provisions of this chapter do not apply to the following:~~

7 ~~(i) the state board of pardons and parole, except that the board is subject to the requirements of~~

8 ~~2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of~~

9 ~~Montana ARM and the Montana Administrative Register register;~~

10 ~~(ii) the supervision and administration of a penal institution with regard to the institutional~~

11 ~~supervision, custody, control, care, or treatment of youths or prisoners;~~

12 ~~(iii) the board of regents and the Montana university system;~~

13 ~~(iv) the financing, construction, and maintenance of public works.~~

14 ~~(b) Agency does not include a school district, unit of local government, or any other political~~

15 ~~subdivision of the state.~~

16 ~~(3) "Agency action" means the whole or a part of, or the equivalent or denial of, the adoption of~~

17 ~~an agency rule, the issuance of a license or order, the award of a contract, or an agency decision that is~~

18 ~~of significant interest to the public.~~

19 ~~(3)(4) "ARM" means the Administrative Rules of Montana.~~

20 ~~(4)(5) "Contested case" means a proceeding before an agency in which a determination of legal~~

21 ~~rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The~~

22 ~~term includes but is not restricted to ratemaking, price fixing, and licensing.~~

23 ~~(6) "Interested person" means a person known to the committee or to an agency to have WHO~~

24 ~~HAS demonstrated in any way TO THE AGENCY an interest concerning agency actions or other agency~~

25 ~~administrative matters AND HAS REQUESTED TO BE PLACED ON THE AGENCY'S LIST OF INTERESTED~~

26 ~~PERSONS.~~

27 ~~(5)(7) "License" includes the whole or part of any an agency permit, certificate, approval,~~

28 ~~registration, charter, or other form of permission required by law but does not include a license required~~

29 ~~solely for revenue purposes.~~

30 ~~(6)(8) "Licensing" includes any an agency process respecting the grant, denial, renewal, revocation,~~

1 ~~suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.~~

2 ~~(7)~~(9) ~~"Party" means a person named or admitted as a party or properly seeking and entitled as of~~
3 ~~right to be admitted as a party, but nothing in this chapter may~~ not ~~be construed to prevent an agency from~~
4 ~~admitting any person as a party for limited purposes.~~

5 ~~(8)~~(10) ~~"Person" means an individual, partnership, corporation, association, governmental~~
6 ~~subdivision, agency, or public organization of any character.~~

7 ~~(9)~~(11) ~~"Register" means the Montana Administrative Register.~~

8 ~~(10)~~(12) ~~"Rule" means each agency regulation, standard, or statement of general applicability that~~
9 ~~implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice~~
10 ~~requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:~~

11 ~~(a) statements concerning only the internal management of an agency and not affecting private~~
12 ~~rights or procedures available to the public;~~

13 ~~(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;~~

14 ~~(c) rules relating to the use of public works, facilities, streets, and highways when the substance~~
15 ~~of the rules is indicated to the public by means of signs or signals;~~

16 ~~(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when~~
17 ~~there is a statutory requirement for the publication of the rules and rules adopted annually or biennially~~
18 ~~relating to the seasonal recreational use of lands and waters owned or controlled by the state when the~~
19 ~~substance of the rules is indicated to the public by means of signs or signals;~~

20 ~~(e) rules implementing the state personnel classification plan, the state wage and salary plan, or~~
21 ~~the statewide budgeting and accounting system;~~

22 ~~(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in~~
23 ~~accordance with 2-4-306 and must be published in the Administrative Rules of Montana~~ ARM.

24 ~~(13) "Significant interest to the public", when used in reference to agency action, means agency~~
25 ~~action that involves a controversial matter~~ THAT THE AGENCY KNOWS TO BE CONTROVERSIAL, a
26 ~~SIGNIFICANT fiscal impact on a particular class or group of individuals, or significant citizen interest.~~

27 ~~(11)~~(14) ~~"Substantive rules" are either:~~

28 ~~(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated~~
29 ~~authority to promulgate rules to implement a statute have the force of law and when not so adopted are~~
30 ~~invalid; or~~

~~(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."~~

~~**Section 10.** Section 2-4-302, MCA, is amended to read:~~

~~"**2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any a rule, the agency shall give written notice of its intended action. The notice shall must, at a minimum, include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon on the intended action. To promote the public's full comprehension of the notice, the notice must be written in plain and clear English and use familiar and understandable words and terms.~~

~~(2) (a) The notice shall must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to interested persons who have made timely requests to the agency for notice of its rulemaking proceedings to be informed of agency actions and to the office of any professional, trade, or industrial society or organization or member thereof which of those entities that has filed a request with the administrative code committee when such request that has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons AND THE SUBJECT OR SUBJECTS IN WHICH EACH PERSON ON THE LIST IS INTERESTED. A person who submits an oral or written comment, attends a hearing, or contacts an agency by any means and for any purpose in regard to intended PROPOSED agency action must be informed of the list by the agency.~~

~~(b) The administrative code committee shall forward a list of all organizations or interested persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the Montana Administrative Register ARM. The list must be amended by the agency upon request of any interested person requesting to be added to or deleted from the list.~~

~~(c) The notice shall must be published and mailed at least 30 days in advance of the agency's intended action. If the intended action is of significant interest to the public, the notice must, at a minimum, be published as required in 2-3-104(3).~~

~~(3) If any a statute provides for a different method of publication different from that provided in~~

~~subsection (2), the affected agency shall comply with the statute in addition to the requirements contained herein in this section. However, in no case may the notice period may not be less than 30 days or more than 6 months.~~

~~(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing shall must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected.~~

~~(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein in this section alters that requirement.~~

~~(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.~~

~~(7) At the commencement of any a hearing on the intended action, the person designated by the agency to preside at the hearing shall:~~

~~(a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register;~~

~~(b) explain the primary function and purpose of the administrative code committee and state how the administrative code committee may be contacted; and~~

~~(c) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.~~"

Section 1. Section 2-4-303, MCA, is amended to read:

"**2-4-303. Emergency or temporary rules.** (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new

emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to ~~immediate~~ judicial review ~~upon petition by any person~~. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective."

~~**Section 12. Section 2-4-305, MCA, is amended to read:**~~

~~**"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall fully consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise CONCISE statement of the principal reasons for and against its adoption, comprehensively incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana Administrative Register register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.~~

~~(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to~~

1 ~~statutory language in order to convey the meaning of a rule interpreting the language, the reference must~~
2 ~~clearly indicate the portion of the language that is statutory and the portion that is an amplification of the~~
3 ~~language.~~
4 ~~(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking~~
5 ~~authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and~~
6 ~~adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that~~
7 ~~the rule purports to implement.~~
8 ~~(4) Each rule that is proposed and adopted by an agency and that implements a policy of a~~
9 ~~governing board or commission must include a citation to and description of the policy implemented. Each~~
10 ~~agency rule implementing a policy and the policy itself must be based on legal authority and otherwise~~
11 ~~comply with the requisites for validity of rules established by this chapter.~~
12 ~~(5) To be effective, each substantive rule adopted must be within the scope of authority conferred~~
13 ~~and in accordance with standards prescribed by other provisions of law.~~
14 ~~(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt~~
15 ~~rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule~~
16 ~~adopted is not valid or effective unless it is:~~
17 ~~(a) consistent and not in conflict with the statute; and~~
18 ~~(b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of~~
19 ~~subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking~~
20 ~~and in the written and oral data, views, comments, or testimony submitted by the public or the agency and~~
21 ~~considered by the agency.~~
22 ~~(7) A rule is not valid unless notice of it is given and it is adopted, in substantial compliance with~~
23 ~~2-4-302 or 2-4-303 and this section, and unless 2-4-306 is complied with and notice of adoption of the~~
24 ~~rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or~~
25 ~~supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule,~~
26 ~~the 6-month limit must be determined with reference to the latest notice in all cases.~~
27 ~~(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies~~
28 ~~in statements of reasonable necessity, in citations of authority for rules, and in citations of sections~~
29 ~~implemented by rules. An agency may use an amended proposal notice, but not the adoption notice, to~~
30 ~~correct deficiencies in a statement of reasonable necessity."~~

1 **Section 2.** Section 2-4-306, MCA, is amended to read:

2 **"2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency
3 shall file with the secretary of state a copy of each rule adopted by it.

4 (2) The secretary of state may prescribe a format, style, and arrangement for notices and rules
5 ~~which~~ that are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that
6 is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a
7 permanent register of all notices and rules filed, including superseded and repealed rules, which ~~shall~~ must
8 be open to public inspection and shall provide copies of any notice or rule upon request of any person.
9 Unless otherwise provided by statute, the secretary of state may require the payment of the cost of
10 providing ~~such~~ copies.

11 (3) In the event that the administrative code committee has conducted a poll of the legislature in
12 accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with
13 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

14 (4) Each rule ~~shall become~~ becomes effective after publication in the register as provided in
15 2-4-312, except that:

16 (a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective
17 date;

18 (b) subject to applicable constitutional or statutory provisions:

19 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated
20 date following publication in the register; and

21 (ii) an emergency rule ~~shall become~~ becomes effective ~~immediately upon filing with the secretary~~
22 ~~of state or~~ at a stated date following publication in the register or immediately upon filing with the secretary
23 of state if the agency finds that this effective date is necessary because of imminent peril to the public
24 health, safety, or welfare. The agency's finding and a brief statement of reasons ~~therefor shall~~ for the
25 finding must be filed with the rule. The agency shall, in addition to the required publication in the register,
26 take appropriate and extraordinary measures to make emergency rules known to every person who may
27 be affected by them."

28 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0389, reference bill, as amended

ESCRIPTION OF PROPOSED LEGISLATION: An act strengthening the requirements for an emergency ule.

SSUMPTIONS:

. Current state law sets requirements for emergency rulemaking.
. Emergency rulemaking occurs relatively infrequently.
. The bill, as amended, will have minimal or no fiscal impact to state agencies.

ISCAL IMPACT:

he bill will have minimal or no fiscal impact to state agencies.

Dave Lewis 4.3.97

AVE LEWIS, BUDGET DIRECTOR DATE
ffice of Budget and Program Planning

BRUCE SIMON, PRIMARY SPONSOR DATE

Fiscal Note for HB0389, reference bill, as amended

HB 389-#3

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

April 8, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, MT 59620

Mr. President:

I am directed by the House of Representatives to inform the Senate that the House, on April 8, 1997, failed to concur with the Senate amendments to House Bill 389, and by motion, the Speaker was authorized to appoint a Conference Committee.

The Speaker appointed the following members:

Representative Simon, Chairman
Representative Brainard
Representative Galvin

The House requests that the Senate appoint a like committee to confer on House Bill 389.

Sincerely,

MARILYN MILLER
Chief Clerk

Susan Anderson 3:40

tnsa

MONTANA STATE SENATE

April 10, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, MT 59620

Mr. Speaker:

I am directed by the Senate to inform the House of Representatives that the Senate on this day, April 10, 1997, acceded to the request of the House and authorized the President to appoint a Conference Committee to meet with a like committee of the House on House Bill No. 389.

The President appointed the following members:

Senator Del Gage, Chair
Senator Lorents Grosfield
Senator Bill Wilson

Respectfully,

ROSANA SKELTON
Secretary of the Senate

RS/jf

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON HOUSE BILL 389

Call to Order: By **CHAIRMAN DELWYN GAGE**, on April 14, 1997, at 8:35 a.m., in Room 104.

ROLL CALL

Members Present:
Rep. Bruce T. Simon (R)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Elaine Benedict, Committee Secretary

HEARING ON HB 389

EXHIBITS 1, 2, 3 & 4. REP. DELWYN GAGE.

Sponsor: **REP. BRUCE SIMON, House District 18, Billings.**

Opening Statement by Sponsor:
{Tape: 1; Side: A; Approx. Time Count: 3.0; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 10.6; Comments: None.}

Informational Testimony:

Beth Baker, Department of Justice.
{Tape: 1; Side: A; Approx. Time Count: 21.5; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 23.0; Comments: None.}

Informational Testimony:

David Niss, Legislative Services Division Staff Attorney.
{Tape: 1; Side: B; Approx. Time Count: 4.0; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: B; Approx. Time Count: 6.3; Comments: None.}

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: B; Approx. Time Count: 9.1; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: B; Approx. Time Count: 9.9; Comments: MR. NISS IS ALSO A RESPONDENT DURING THIS PORTION OF QUESTIONING.}

Informational Testimony:

Russel Cater, Department of Health and Human Services Chief Legal Counsel/Governor's Office.
{Tape: 2; Side: A; Approx. Time Count: 25.9; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 26.9; Comments: None.}

ADJOURNMENT

Adjournment: 10:05

SEN. DELWYN GAGE, Chairman

ELAINE BENEDICT, Secretary

DG/EMB

HOUSE OF REPRESENTATIVE
ROLL CALL

HB 389 Conference COMMITTEE

DATE 4-14-97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon	X		
Rep. Matt Brainard	X		
Rep. Patrick Galvin	X		
Sen. Delwyn Gage	X		
Sen. Lorentz Grossfield	X		
Sen. Bill Wilson	X		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 4-14-97

BILL NO. 389 SPONSOR(S)

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
POI	Russ Cater	Helena	DPHHS / Governor's Office
POI	Annie Ramos	Helena	D.O.C.
POI	Beth Baker	Helena	Dept of Justice
POI	Nancy Butler	Helena	State Fund
POI	Kathy Lubke	Helena	Secretary of State
POI	MARK CADWALLADER	HELENA	Dept of Labor
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

April 14, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, MT 59620

Mr. President:

I am directed by the House of Representatives to inform the Senate that the House on April 14, 1997, by motion, dissolved the Conference Committee on Senate Amendments to House Bill No. 389, "STRENGTHEN THE REQUIREMENTS FOR AN EMERGENCY STATE AGENCY RULE", and the Speaker was authorized to appoint a Free Conference Committee.

The Speaker appointed the following members;

Representative Bruce Simon, Chairman
Representative Brainard
Representative Galvin

The House requests that the Senate appoint a like committee to confer on House Bill No. 389.

Sincerely,

Marilyn Miller

MARILYN MILLER
Chief Clerk

trccafcc

Susan Andrews
4:05

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 389

Call to Order: By **CHAIRMAN DELWYN GAGE**, on April 16, 1997, at 8:06, in Room 104.

ROLL CALL

Members Present:
Rep. Bruce T. Simon (R)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Bill Wilson, excused at 8:30.

Members Absent: None

Staff Present: Elaine Benedict, House Committee Secretary

HEARING ON HB 389

EXHIBIT 1. Beth Baker, Department of Justice.

Sponsor: **REP. BRUCE SIMON, House District 18, Billings.**

Opening Statement by Sponsor:
{Tape: 1; Side: A; Approx. Time Count: 1.6; Comments: None.}

Questions From Committee and Responses:
{Tape: 1; Side: A; Approx. Time Count: 5.8; Comments: None.}

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: A; Approx. Time Count: 7.9; Comments: None.}

REP. SIMON.
{Tape: 1; Side: A; Approx. Time Count: 10.7; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 12.3; Comments: None.}

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: A; Approx. Time Count: 15.1; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 15.8; Comments: None.}

EXECUTIVE ACTION ON HB 389

Amendments: Item 1 of Exhibit 1.

Motion/Vote: SEN. LORENTS GROSFIELD MOVED AMENDMENT 1 OF EXHIBIT 1, WITH THE SUBSTITUTION OF "ANY PERSON" FOR "A PERSON", DO PASS. Motion failed.
{Tape: 1; Side: A; Approx. Time Count: 19.0; Comments: None.}

Motion/Vote: SEN. GROSFIELD MOVED THAT AMENDMENT 1 OF EXHIBIT 1, WITH THE SUBSTITUTION OF "ANY PERSON FOR "A PERSON" AND WITH THE EXCEPTION OF THE PHRASE "AFFECTED BY THE RULE", DO PASS. Motion carried unanimously.
{Tape: 1; Side: A; Approx. Time Count: 19.8; Comments: None.}

HEARING ON HB 389

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: A; Approx. Time Count: 20.1; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 22.1; Comments: None.}

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: A; Approx. Time Count: 28.3; Comments: None.}

Questions From Committee and Responses:
{Tape: 1; Side: A; Approx. Time Count: 29.7; Comments: None.}

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: A; Approx. Time Count: 30.1; Comments: None.}

Questions From Committee and Responses:
{Tape: 1; Side: A; Approx. Time Count: 30.9; Comments: None.}

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: A; Approx. Time Count: 31.2; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 32.3; Comments: None.}

Informational Testimony:

Ms. Baker.
{Tape: 1; Side: A; Approx. Time Count: 34.6; Comments: None.}

REP. SIMON.
{Tape: 1; Side: A; Approx. Time Count: 35.8; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 36.8; Comments: None.}

Informational Testimony:

Mark Cadwallader, Department of Labor & Industry Staff Attorney.
{Tape: 1; Side: A; Approx. Time Count: 43.7; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 1; Side: B; Approx. Time Count: 4.8; Comments: None.}

EXECUTIVE ACTION ON HB 389

Amendments: Item 2 of Exhibit 1.

Motion/Vote: SEN. GROSFIELD MOVED AMENDMENT 2 OF EXHIBIT 2 WITH THE FOLLOWING CORRECTIONS: PAGE 2, SUBSECTION 5--CHANGE "PART" TO "CHAPTER" AND STRIKE "RULEMAKING"; ADD TO END OF SUBSECTION 5--"THIS TERM DOES NOT EXTEND TO CONTESTED CASES"; PAGE 3, SECTION 4--CHANGE "NOTICE" IN FINAL SENTENCE TO "RATIONALE"; PAGE 6, SUBSECTION 8--CHANGE FINAL SENTENCE TO READ "AN AGENCY MAY USE AN AMENDED PROPOSAL NOTICE, BUT (EXCEPT FOR CLERICAL CORRECTIONS) NOT THE ADOPTION NOTICE, TO CORRECT DEFICIENCIES IN A STATEMENT OF REASONABLE NECESSITY." DO PASS. Motion carried unanimously.
{Tape: 1; Side: B; Approx. Time Count: 8.0; Comments: None.}

Motion: REP. SIMON MOVED TO INCLUDE THE PRIOR SECTION 1 OF THE BILL AS IT WAS PROPOSED.
{Tape: 1; Side: B; Approx. Time Count: 10.1; Comments: None.}

Vote: Motion failed with SEN. DELWYN GAGE, SEN. GROSFIELD and SEN. BILL WILSON voting no.
{Tape: 1; Side: B; Approx. Time Count: 14.1; Comments: None.}

Motion/Vote: REP. SIMON MOVED THE ADOPTION OF THE COMMITTEE REPORT. Motion passed unanimously.
{Tape: 1; Side: B; Approx. Time Count: 14.3; Comments: None.}

ADJOURNMENT

Adjournment: 9:00

SEN. DELWYN GAGE, Chairman

ELAINE BENEDICT, Secretary

DG/EMB

HOUSE OF REPRESENTATIVE
ROLL CALL

HB 389 Free Conference COMMITTEE

DATE 4-16-97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon	X		
Rep Matt Brainard	X		
Rep. Patrick Ashmore	X		
Sen. Delwyn Gage	X		
Sen. Lorents Grosfield	X		
Sen. Bill Wilson	X		

do.

EXHIBIT 1
DATE 4-14-97
HB 389

Senate State Administration Committee
March 14, 1997
Discussion Regarding HB 389 sponsored by **REP. BRUCE SIMON**

Discussion:

CHAIRMAN HARGROVE pointed out that a lot of amendments have been proposed, and he has suggested to **David Niss** that he not busy himself with a whole lot of work until the Committee has had time to look at that because it is his feeling that the bill probably is not worth the effort, that, as far as he is concerned, the bill probably should not go anywhere. He indicated that he is a little bit of a cynic but, as far as public information and the openness of government, he doubts if there is any place in the world that has a more open government than Montana, that there is no place where people have more information. He reported that, in the last session, in the Local Government Committee, there was a bill to remove the requirement to publish the county budgets in the newspapers, that the bill passed, and all of the testimony was that no one ever reads them. He added that the only people who opposed the bill were the newspapers, who, obviously, make money from those ads. He noted that he was impressed that there were a lot of people who said they were spending a lot of money, and this information is available to the public. He said that his observation has been that meetings are held over a period of time on an issue, that notices are put out, and a lot of money is spent, but when a meeting occurs, no one shows up until the last meeting, and that most of the effort is without value. He indicated that he would agree with the sponsor that the $6 million is probably realistic, but to make them go through even more openness at great cost than we do now, we have already reached the point of diminishing return. He indicated to the Committee that he would like some discussion, if they think it is worth having **Mr. Niss** go to the trouble of going through all of the amendments.

SEN. GAGE reminded the Committee that, last session, there was a subdivision zoning bill in Local Government Committee, where they were using the emergency rules, that the bill finally was tabled and the sponsors were invited to return this session with a bill to address the issue. He indicated that he likes the emergency rule section of this bill, and would like to see the Committee consider amending everything else out of the bill, leaving the emergency rules section in, noting that is Section 11. He explained this is because of those conflicts and the fact that some of these people are adopting, according to the testimony, emergency rules and then letting it go past the time, without having hearings, and that this is an extraordinary power.

SEN. THOMAS stated that is a good point. He indicated that he agrees with **SEN. GAGE** on that section, but pointed out that the first six amendments deal with Section 3, on page 2 of the bill, and, noting that he is not an expert on the rule process, said that it seems to him that the legislative process is more open and conducive to the public than the rulemaking process, which is kind of behind closed doors. He noted that he should not say that, but it seems to him that it is not as open and public as at least this process is. He said that they are always complaining about those rules, and for good reason in large part, reporting that a

bill, which was taken off second reading recently, had to do with prevailing wage and had rulemaking authority in it. He indicated that this bill almost snuck through this whole session under the guise of the consensus bill, that it really was a consensus among a group of like parties and, although it does not relate exactly to this subject, in the bill was rulemaking authority that is probably expansive to the subject matter that they may look at in the session, noting that this area of rulemaking and disclosure, and inviting people to the table to work on it, and be noticed of it, he thinks is very important.

CHAIRMAN HARGROVE agreed that it is very important, and reported that there are two bills addressing that, that one would be to inform the sponsor, that this would be using representative government on rulemaking authority. He indicated the other one is by **SEN. LOREN JENKINS's** bill dealing with giving the Administrative Code Committee some power to do that, noting that it may be vetoed again, that it was last time, pointing out that it failed an override by one vote, which is interesting, stating that it could go this time. He said that he is not real enamored with it but, with this bill, it might become a little more active, rather than just be exception, as it is now. He remarked that, to put himself in the position of the State engineer who designs highways, he has a room full of blueprints, and people coming in all day, that he is making up these rules as he goes along and trying to fit them into the law that he has in his mind, and he writes them down. He indicated he is not sure how, or really at what point that rulemaking process would be eliminated but, from the standpoint of time, in his opinion, that $6 million is probably (the rest of the sentence was garbled).

SEN. VIVIAN BROOKE said that she thinks this always goes to the dilemma that this is a citizen legislature, and the fact that, during the interim, they are on interim committees, they are responding to constituents' calls or invitations, and are involved in their communities and jobs. She indicated that she feels she would have to be a professional legislator before she could really involve herself in that kind of administrative work and oversight, that she would like to, but there is just not time to provide the public oversight for rulemaking, noting that they do the best they can given the circumstances, with the distances in the State, and with the time available. She reminded the Committee that **REP. BRUCE SIMON** testified about who gets the *Montana Administrative Register*, and pointed out that it must be in the libraries and, if not, she would think they would want to make sure it is in the libraries for the public, and it could be advertised more that the public could avail themselves of that, or even in the city/county governmental areas, public access to that, rather than having that subscription go out to more people.

CHAIRMAN HARGROVE indicated that, to satisfy the question that Sections 11, 12 and 13 could be left in, noting that Section 13 deals a little bit with rulemaking, with the emergency process, and does not address any of the publicity, which is, he thinks, addressed in everything else.

SEN. DELWYN GAGE indicated that, in his opinion, some of this has got to be left to the public to be responsible, as well. He pointed out that, if someone is that concerned about something, they have to know that it went through the session and, if nothing else, they should write to that division requesting that, when they are ready to do rule on an issue, they be notified, personally. He noted that he thinks they would be notified, that he has confidence enough in the State agencies, that he does not think they are trying to sneak things through, and that he believes the bill requiring notification to sponsors will take care of 99% of them.

SEN. KEN MESAROS stated that he agrees, that he thinks that is something of an issue by this administration, that it has now been codified, and he thinks it is a major improvement. He referred to Section 11, regarding emergency rulemaking that **SEN. GAGE** was speaking to, on lines 7 and 8, page 10, "sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to", noting that the word "immediate" was inserted, and he continued reading "judicial review", then noted that "upon petition by any person" was inserted. He stated that would mean any one person, noting that it was brought out in testimony, and indicated that he would say that a petition by any one person is too broad.

SEN. GAGE said they could put something about numbers of persons, or whatever.

SEN. MESAROS told **SEN. GAGE** that he does not know what the magic number is, but that he believes that, for any one person to do that (the rest of the sentence was garbled).

CHAIRMAN HARGROVE suggested leaving it the way it was, "subject to judicial review".

SEN. GAGE suggested "expiration of the", noting that, as he recalls, after 120 days these emergency rules become permanent.

David Niss indicated that it is the reverse, that he thinks the agency has to go back to adopt it.

CHAIRMAN HARGROVE asked if 120 days is the trigger.

SEN. GAGE indicated they could say something to the effect of "prior to the expiration of".

Mr. Niss referred the Committee to line 30 on page 9, "The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-

4-302", explaining that means a permanent rule, "is not precluded.", pointing out that it actually expires.

SEN. GAGE indicated that they could put something in to the effect that, prior to the expiration of the 120 days, or judicial review within a period not longer than 120 days.

Mr. Niss reported that, if a person can file the petition within 120 days, that certainly would not be immediate, so it is a choice of one or the other.

SEN. GAGE noted that he was trying to get away from the "immediate", that it would be impossible with some of these real busy judicial districts.

CHAIRMAN HARGROVE said that his sense of that is that the judicial review is not to necessarily make sure that this is being done exactly, that it is for lessons learned, to make sure it was done right in keeping the train on track. He added that he guesses that they might, in some cases, want a review while the activity is still in the emergency stage.

SEN. GAGE stated that he does not have a problem with just leaving it the way it is, just striking the word "immediate" and "upon petition by any person". He added that he does like the fact that it indicates that this pretty potent power, that it is an exceptional power.

CHAIRMAN HARGROVE asked **Mr. Niss** to prepare an amendment that would strike all of the new language up to Section 11, that he thinks they should leave Sections 12 and 13, as well, making that one change in Section 11.

Adjourn 10:45 a.m.

EXHIBIT 2
DATE 4-14-97
HB 389

Senate State Administration Committee
March 17, 1997
Executive Action on HB 389 sponsored by **REP. BRUCE SIMON**

EXECUTIVE ACTION ON HB 389

Amendments: HB038901.adn **(EXHIBIT)**

Discussion:

CHAIRMAN DON HARGROVE pointed out that this bill by **REP. BRUCE SIMON** has about $6 million worth of public notice requirements with regard to rulemaking, and that there have been a number of amendments. He stated that the emergency rules is probably appropriate and, if that is, it seems that the changes to Sections 12 and 13 are still good, and that he believes that the amendments would delete everything except Sections 11, 12 and 13.

David Niss stated that he has taken out Section 12, also.

CHAIRMAN HARGROVE asked **Mr. Niss** to explain the amendments.

Mr. Niss reported that the amendments change the title and strike everything down to page 9, line 23, and leaves in current Section 11, that, with the amendment, it would now be Section 1, Emergency or Temporary Rules. He indicated that, on page 10, the amendment also returns that middle sentence to current existing language, that it strikes the new language "immediate" and new language "upon petition by any person." He added that it leaves in all the rest of the new language on lines 8 through 12, that it strikes all of current Section 12. He explained that Section 12 is being stricken from the bill because he understood **SEN. GAGE's** intent was to take out everything but the emergency rule provisions, and current Section 12 does not apply to emergency rules. He then indicated that the big change is in subsection (8) at the bottom of page 11, lines 27 through 30.

CHAIRMAN HARGROVE asked, when he says strike Section 12, if he means current law, or just the changes.

Mr. Niss replied that he is taking that section out of the bill, that it is not a repeal, but is being stricken from the bill. He further explained that this is being done because the new language, which is mostly in lines 29 and 30, is not connected to emergency rulemaking, that it has a different purpose than the changes that **SEN. GAGE** wanted to accomplish in deleting the rest of the bill. He added that he has left in Section 13 because the language, particularly lines 21 through 27 on page 12, do concern emergency rulemaking and the language provides a new date for the effective date of an emergency rule. He explained that, currently, in the notice filed with the Secretary of State's office, and published in the *Montana Administrative Register*, agencies can state only an effective date following publication of the *Montana Administrative Register*, and the new language would allow them to state in the *Montana Administrative Register* that it is effective upon filing with the

Secretary of State, which is prior to the time that most people would see the notice in the *Montana Administrative Register*, and agencies could already have rule effective at that time, which they can not do now.

Motion: **SEN. GAGE** moved that HB038901.adn **BE ADOPTED**

Discussion:

SEN. GAGE stated that he does not have a problem with Section 12 not being in the bill, and indicated that he would agree to segregating the amendments.

Mr. Niss stated that Section 12 is stricken in the amendments, that it would be stricken unless the Committee wanted to change one of the paragraphs of the amendments.

CHAIRMAN HARGROVE asked **SEN. GAGE** if he will move the amendments as they are.

SEN. GAGE responded he will move them as they are. He added that he is assuming these amendments will be rejected in the House.

CHAIRMAN HARGROVE responded that he spoke with **REP. BRUCE SIMON**, and told him the bill would be pretty unrecognizable, and had the feeling that he expected it, although he did not really say. He added that he thinks **REP. SIMON** is just happy to have something survive so that he does not lose another bill, but that this may not be true and he does not know. He noted that there may be a Conference Committee on this bill.

(**SEN. GAGE** chuckled at that statement!!)

Mr. Niss reported there is a very interesting history to this, that he heard about it in talking with another staff person. He indicated that this bill was actually tabled in the House by an extremely strong vote, and was pulled out of committee by the floor, and the way he interprets that is that the floor voted the way that they did because they did not hear all of the testimony in opposition in the House committee.

SEN. BROOKE stated "the House, in its wisdom."

SEN. THOMAS countered "or lack thereof."

CHAIRMAN HARGROVE added that they may have been counting on the Senate to do something about it.

SEN. THOMAS said "we should beat up on the House."

SEN. GAGE remarked it is like a meat grinder over there.

Vote: The motion to **ADOPT HB038901.adn CARRIED UNANIMOUSLY**.

{Tape: 2; Side: A; Approx. Time: 11:52 a.m.; Comments: None.}

Motion/Vote: **SEN. THOMAS** moved that **HB 389 BE CONCURRED IN AS AMENDED**. The motion **CARRIED** with **SEN. THOMAS, SEN. GAGE, SEN. MESAROS AND CHAIRMAN HARGROVE IN FAVOR**, and **SEN. THOMAS AND SEN. BROOKE OPPOSED**.

SEQ NO. 868
REVISION 0

MAR 24 1997
1:39 PM

MONTANA SENATE
55th LEGISLATURE
1997 REGULAR SESSION

EXHIBIT 3
DATE 4-14-97
HB 389

HB 389
SIMON
THIRD READING
BE CONCURRED IN

PRESIDING: AKLESTAD

49 YEAS 1 NAYS 0 NOT VOTING 0 EXCUSED 0 PAIRED

Y	BAER	Y	HERTEL
Y	BARTLETT	Y	HOLDEN
Y	BECK	Y	JABS
Y	BENEDICT	Y	JENKINS
Y	BISHOP	Y	JERGESON
Y	BROOKE	N	KEATING
Y	BURNETT	Y	LYNCH
Y	CHRISTIAENS	Y	MAHLUM
Y	COLE	Y	MCCARTHY
Y	CRIPPEN	Y	MCNUTT
Y	CRISMORE	Y	MESAROS
Y	DEPRATU	Y	MILLER
Y	DEVLIN	Y	MOHL
Y	DOHERTY	Y	NELSON
Y	ECK	Y	SHEA
Y	EMERSON	Y	SPRAGUE
Y	ESTRADA	Y	STANG
Y	FOSTER	Y	SWYSGOOD
Y	FRANKLIN	Y	TAYLOR
Y	GAGE	Y	THOMAS
Y	GLASER	Y	TOEWS
Y	GROSFIELD	Y	VANVALKENBURG
Y	HALLIGAN	Y	WATERMAN
Y	HARGROVE	Y	WILSON
Y	HARP	Y	AKLESTAD

Y=YEA N=NAY E=EXCUSED -=ABENT OR NOT VOTING
YP=PAIRED YEA NP=PAIRED NAY Y*=CENTRAL YEA N*=CENTRAL NAY

EXHIBIT 4
DATE 4-14-97
HB 389

Amendments to House Bill No. 389
Third Reading Copy

Requested by Sen. Gage
For the Committee on State Administration

Prepared by David S. Niss
March 17, 1997

1. Title, lines 5 through 7.
Strike: "PROVIDING" on line 5 through "PROVISIONS;" on line 7

2. Title, lines 8 and 9.
Strike: "PROHIBITING" on line 8 through "NECESSITY;" on line 9

3. Title, lines 9 through 10.
Strike: "SECTIONS" on line 9 through "2-4-302," on line 10
Insert: "SECTION"

4. Title, line 11.
Strike: "2-4-305,"

5. Page 1, line 15, through page 9, line 23.
Strike: sections 1 through 10 in their entirety
Renumber: subsequent sections

6. Page 10, line 8.
Strike: "<u>immediate</u>"
Strike: "<u>upon petition by any person</u>"

7. Page 10, line 20, through Page 11, line 30..
Strike: section 12 in its entirety
Renumber: subsequent section

EXHIBIT 5
DATE 4-16-97
HB 389

Proposed Amendments to House Bill 389
Reference Bill As Amended (Salmon)

Prepared by Beth Baker
For the Free Conference Committee
April 15, 1997

1. Page 10, line 8.
Following: "review"
Insert: "upon petition by a person affected by the rule. The matter must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character."

2. Page 12, following line 27.
Insert:
"**Section 3.** Section 2-4-102, MCA, is amended to read:
"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:
(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.
(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:
(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ~~Administrative Rules of Montana~~ ARM and the ~~Montana Administrative Register~~ register;
(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;
(iii) the board of regents and the Montana university system;
(iv) the financing, construction, and maintenance of public works.
(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.
(3) "ARM" means the Administrative Rules of Montana.
(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

chapter

(5) "Interested person" means a person who has expressed to the agency an interest concerning agency rulemaking actions under this part and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

~~(5)~~ (6) "License" includes the whole or part of ~~any~~ an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

~~(6)~~ (7) "Licensing" includes ~~any~~ an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

~~(7)~~ (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but ~~nothing in~~ this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

~~(8)~~ (9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

~~(9)~~ (10) "Register" means the Montana Administrative Register.

~~(10)~~ (11) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification

plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ~~Administrative Rules of Montana~~ ARM.

(12) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals. The term does not extend to contested cases.

~~(11)~~(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 4. Section 2-4-302, MCA, is amended to read:

"**2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of ~~any~~ a rule, the agency shall give written notice of its intended action. The notice ~~shall~~ must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ on the intended action. The notice must be written in plain, easily understood language.

(2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed within 3 days of publication to interested persons who have made timely requests to the agency ~~for notice~~ to be informed of its rulemaking proceedings and to the office of any professional, trade, or industrial society or organization or member ~~thereof which~~ of those entities that has filed a request with the administrative code committee ~~when such request~~ that has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency

complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and complies with subsection (7).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ ARM. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice ~~shall~~ must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (a) of this section, the agency shall post the notice on the state electronic bulletin board or other electronic communications system available to the public.

(3) If ~~any~~ a statute provides for a ~~different~~ method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ in this section. However, ~~in no case may~~ the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing ~~shall~~ must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing ~~herein~~ in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended

action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list."

Section 5. Section 2-4-305, MCA, is amended to read:

"**2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall fully consider ~~fully~~ written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement,

interpret, make specific, or otherwise carry out the provisions of the statute, a rule adopted is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, ~~or~~ 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in ~~statements of reasonable necessity, in~~ citations of authority for rules~~,~~ and in citations of sections implemented by rules. An agency may use an amended proposal notice, but not the adoption notice, to correct deficiencies in a statement of reasonable necessity."

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 4-16-97

BILL NO. 389 SPONSOR(S) _____

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	MARK CADWALLADER	HELENA	DEPT. OF LABOR
P O I	Beth Baker	Helena	Justice
P O I	Russ Cater	Helena	DPHHS / Governor
P O I	Kathy LuBelle X	Helena	Secretary of State
P O I	Nancy Butler	Helena	State Fund
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

FREE CONFERENCE COMMITTEE

on House Bill 389
Report No. 1, April 16, 1997

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 389** (reference copy -- salmon) and recommend that **House Bill 389** be amended as follows:

1. Title, line 7.
Following: "~~PROVISIONS;~~"
Insert: "PROVIDING FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING; AMENDING PROVISIONS FOR NOTICE OF AGENCY RULES; DEFINING TERMS;"

2. Title, line 9.
Following: "~~NECESSITY;~~"
Insert: "PROHIBITING THE USE OF AN ADOPTION NOTICE TO CURE DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY;"

3. Title, line 11.
Following: "SECTIONS"
Insert: "2-4-102, 2-4-302,"
Following: "~~2-4-305,~~"
Insert: ", 2-4-305,"

4. Page 9.
Following: line 23
Insert: "**Section 1.** Section 2-4-102, MCA, is amended to read:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ~~Administrative Rules of Montana~~ ARM and the ~~Montana Administrative Register~~ register;

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HB 389

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the persons desires to be given notice. The term does not extend to contested cases.

~~(5)~~(6) "License" includes the whole or part of ~~any~~ an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

~~(6)~~(7) "Licensing" includes ~~any~~ an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

~~(7)~~(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but ~~nothing in~~ this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

~~(8)~~(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

~~(9)~~(10) "Register" means the Montana Administrative Register.

~~(10)~~(11) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ~~Administrative Rules of Montana~~ ARM.

(12) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals. The term does not extend to contested cases.

~~(11)~~(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 2. Section 2-4-302, MCA, is amended to read:

"**2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice ~~shall~~ must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ on the intended action. The rationale must be written in plain, easily understood language.

(2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed within 3 days of publication to interested persons

who have made timely requests to the agency ~~for notice~~ to be informed of its rulemaking proceedings and to the office of any professional, trade, or industrial society or organization or member ~~thereof which~~ of those entities that has filed a request with the administrative code committee ~~when such request~~ that has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ ARM. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice ~~shall~~ must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a) of this section, the agency shall post the notice of the state electronic bulletin board or other electronic communications system available to the public.

(3) If ~~any~~ a statute provides for a ~~different~~ method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ in this section. However, ~~in no case may~~ the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing ~~shall~~ must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing

is otherwise required by statute, nothing ~~herein~~ in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.""

Renumber: subsequent sections

5. Page 10, line 8.
Following: "~~person~~"
Insert: "upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character"

6. Page 11.
Following: line 30
Insert: "**Section 4.** Section 2-4-305, MCA, is amended to read:

"**2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall fully consider ~~fully~~ written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which

the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule adopted is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, ~~or~~ 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in ~~statements of reasonable necessity, in~~ citations of authority for rules, and in citations of sections implemented by rules. An agency may use an amended proposal notice, but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.""

Renumber: subsequent section

And this FREE Conference Committee report be adopted.

For the House:

Representative Simon, Chair

Representative Brainard

Representative Galvin

For the Senate:

Senator Gage, Chair

Senator Grosfield

Senator Wilson

HOUSE BILL NO. 389

INTRODUCED BY SIMON, ELLIS, GROSFIELD, GRINDE, BAER, BOHLINGER, SLITER, MCCANN, PECK, OHS, KNOX, BEAUDRY, DEBRUYCKER, HARP, COCCHIARELLA, BOHARSKI

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING AND OTHER AGENCY ACTIONS; AMENDING PROVISIONS FOR NOTICE OF AGENCY RULES AND ACTIONS; DEFINING TERMS; CLARIFYING EXISTING PROVISIONS;~~ PROVIDING FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING; AMENDING PROVISIONS FOR NOTICE OF AGENCY RULES; DEFINING TERMS; STRENGTHENING THE REQUIREMENTS FOR AN EMERGENCY RULE; ~~PROHIBITING THE USE OF AN ADOPTION NOTICE TO CURE DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY;~~ PROHIBITING THE USE OF AN ADOPTION NOTICE TO CURE DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY; AND AMENDING ~~SECTIONS 2-3-101, 2-3-102, 2-3-103, 2-3-104, 2-3-105, 2-3-112, 2-3-114, 2-3-203, 2-3-213, 2-3-221, 2-4-102, 2-4-302,~~ SECTIONS 2-4-102, 2-4-302, 2-4-303~~, 2-4-305,~~, 2-4-305, AND 2-4-306, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 2-3-101, MCA, is amended to read:~~

~~"**2-3-101. Legislative intent.** The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency and that this part must be liberally construed to achieve that purpose."~~

~~**Section 2.** Section 2-3-102, MCA, is amended to read:~~

~~"**2-3-102. Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Agency" means any a board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:~~

~~(a) the legislature and any or a branch, committee, or officer thereof of the legislature;~~

REFERENCE BILL: INCLUDES FREE CONFERENCE COMMITTEE REPORT DATED 4-16-97

~~(b) the judicial branches and any branch or a committee or officer thereof of the judicial branch;~~

~~(c) the governor, except that an agency is not exempt merely because the governor has been designated as a member thereof of the agency; or~~

~~(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.~~

~~(2) "Agency action" means the whole or a part of, or the equivalent or denial of, the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof an agency decision that is of significant interest to the public.~~

~~(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:~~

~~(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or~~

~~(b) declaratory rulings as to the applicability of any statutory provision or of any rule.~~

~~(4) "Significant interest to the public" means the undertaking of an agency action or decision that involves a controversial matter THAT THE AGENCY KNOWS TO BE CONTROVERSIAL, a SIGNIFICANT fiscal impact on a particular class or group of individuals, or significant citizen interest."~~

~~**Section 3. Section 2-3-103, MCA, is amended to read:**~~

~~**"2-3-103. Public participation -- governor to insure ensure guidelines adopted.** (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. Each agency shall create and maintain an interested persons list CONTAINING THE SUBJECT OR SUBJECTS IN WHICH EACH PERSON ON THE LIST IS INTERESTED. Each person submitting oral or written comments to, attending a hearing of, or in any way contacting the agency for any purpose concerning agency actions and decisions must be ADVISED OF AND GIVEN AN OPPORTUNITY TO BE placed on the list by the agency and given notice of each intended or proposed agency action and each agency decision relating to matters in AS TO which the person has expressed an interest in the person's contacts with the agency REQUESTED~~

1 ~~NOTICE.~~

2 ~~(2) The governor shall insure ensure that each board, bureau, commission, department, authority,~~
3 ~~agency, or officer of the state adopts coordinated rules for its programs, which The guidelines shall must~~
4 ~~provide policies and procedures to facilitate public participation in those programs, consistent with~~
5 ~~subsection (1) of this section. These guidelines shall must be adopted as rules and published in a manner~~
6 ~~which that may be provided to a member of the public upon request."~~

7

8 ~~**Section 4.** Section 2-3-104, MCA, is amended to read:~~

9 ~~"**2-3-104. Requirements for compliance with notice provisions.** An agency shall be considered to~~
10 ~~have complied complies with the notice provisions of 2-3-103 if:~~

11 ~~(1) an environmental impact statement is prepared and distributed as required by the Montana~~
12 ~~Environmental Policy Act, Title 75, chapter 1;~~

13 ~~(2) a proceeding is held as required by the Montana Administrative Procedure Act;~~

14 ~~(2) A PROCEEDING IS HELD AS REQUIRED BY THE MONTANA ADMINISTRATIVE PROCEDURE~~
15 ~~ACT AND NOTICE OF THE PROCEEDING IS EITHER POSTED ON THE STATE ELECTRONIC BULLETIN~~
16 ~~BOARD OR IS PUBLISHED IN A PRESS RELEASE ISSUED BY THE AGENCY;~~

17 ~~(3)(2)(3) a public hearing, after appropriate and adequate notice is given, is held pursuant to any~~
18 ~~other a provision of state law or a local ordinance or resolution; or~~

19 ~~(4)(3)(4) a newspaper of general circulation within the area to be affected by a decision of~~
20 ~~significant interest to the public has carried a news story or advertisement A NEWS STORY OR an~~
21 ~~advertisement giving notice of opportunity to be heard concerning the decision sufficiently prior to a final~~
22 ~~decision to permit public comment on the matter. The AN advertisement must be printed in at least~~
23 ~~12-point type and must comply with the notice requirements of 2-4-302(1). If the newspaper has a Sunday~~
24 ~~edition, the advertisement must be in that edition."~~

25

26 ~~**Section 5.** Section 2-3-105, MCA, is amended to read:~~

27 ~~"**2-3-105. Supplemental notice by radio or television.** (1) Any An official of the state or any of one~~
28 ~~of its political subdivisions who is required by law to publish any a notice required by law may, and is~~
29 ~~encouraged to, supplement such the publication by a radio or television broadcast, or both, of a summary~~
30 ~~of such the notice or by both of such broadcasts when if in his the official's judgment the public interest~~

~~will be served.~~

~~(2) The~~ When a ~~summary of such~~ a ~~notice shall only be read with no reference to any person by name then is broadcast, a candidate for political office may not be referred to.~~

~~(3) Such announcements shall be made~~ A summary may be broadcast ~~only by duly employed personnel of the station from which such~~ the ~~broadcast emanates.~~

~~(4) Announcements~~ An announcement ~~by a political subdivisions~~ subdivision ~~may be made only by stations~~ a station ~~situated within the county of origin of the legal notice unless no~~ a ~~broadcast station exists~~ does not exist ~~in such~~ that ~~county, in which case announcements~~ the announcement ~~may be made by a station or stations situated in any county other than the county of origin of the legal notice."~~

~~**Section 6.** Section 2-3-112, MCA, is amended to read:~~

~~"**2-3-112. Exceptions.** The provisions of 2-3-103 and 2-3-111 do not apply to:~~

~~(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;~~

~~(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of~~ to file ~~a lawsuit in a court of law or becoming~~ to become ~~a party to an administrative proceeding; or~~

~~(3) a decision involving no more than a ministerial act."~~

~~**Section 6.** Section 2-3-114, MCA, is amended to read:~~

~~"**2-3-114. Enforcement.** The district courts of the state have jurisdiction to set aside~~ or declare void ~~an agency decision under this part upon petition made within 30 days of the date of the decision of any~~ by a ~~person whose rights have been prejudiced~~ THAT IS FILED WITHIN 30 DAYS AFTER THE DATE OF THE DECISION OR WITHIN 30 DAYS AFTER THE DECISION BECOMES PUBLIC, WHICHEVER IS LATER."

~~**Section 8.** Section 2-3-203, MCA, is amended to read:~~

~~"**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in~~

1 ~~whole or in part by public funds or expending public funds must be open to the public.~~

2 ~~(2) All meetings of associations that are composed of public or governmental bodies referred to~~

3 ~~in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the~~

4 ~~public.~~

5 ~~(3) Provided, however, the~~ The ~~presiding officer of any~~ a ~~meeting subject to subsections (1) and~~

6 ~~(2) may close the meeting during the time~~ that ~~the discussion relates to a matter of individual privacy and~~

7 ~~then if and only if the presiding officer determines that the demands of individual privacy clearly exceed~~

8 ~~the merits of public disclosure. The right of individual privacy may be waived by the individual about whom~~

9 ~~the discussion pertains, and, in that event, the meeting must be open.~~

10 ~~(4) (a) However, except~~ Except ~~as provided in subsection (4)(b), a meeting may be closed to~~

11 ~~discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental~~

12 ~~effect on the litigating position of the public agency.~~

13 ~~(b) A meeting may not be closed to discuss strategy to be followed in litigation~~ involving ~~the~~

14 ~~enforcement or preservation of a constitutional right of the people or~~ in ~~which the only parties are public~~

15 ~~bodies or associations described in subsections (1) and (2).~~

16 ~~(5) Any~~ A ~~committee or subcommittee appointed by a public body or an association described in~~

17 ~~subsection (2) for the purpose of conducting business which~~ that ~~is within the jurisdiction of that agency~~

18 ~~is subject to the requirements of this section."~~

19

20 ~~**Section 7.** Section 2-3-213, MCA, is amended to read:~~

21 ~~"**2-3-213. Voidability.** Any~~ A ~~decision made in violation of 2-3-203 may be declared void by a~~

22 ~~district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of~~

23 ~~the decision.~~ AN ACTION TO INVALIDATE THE DECISION MUST BE COMMENCED WITHIN 30 DAYS

24 AFTER THE DATE OF THE DECISION OR WITHIN 30 DAYS AFTER THE DECISION BECOMES PUBLIC,

25 WHICHEVER IS LATER."

26

27 ~~**Section 8.** Section 2-3-221, MCA, is amended to read:~~

28 ~~"**2-3-221. Costs and attorney fees to plaintiff** PARTY ~~**in certain actions to enforce constitutional**~~

29 ~~**right to know.** A plaintiff~~ PARTY ~~who prevails in an action brought in district court to enforce his~~ the

30 ~~plaintiff's~~ PARTY'S ~~rights under Article II, section 9, of the Montana constitution may~~ must MAY ~~be~~

~~awarded his costs and reasonable attorneys' attorney fees as a matter of course. A prevailing plaintiff PARTY who is not represented by an attorney must be awarded 90% of what the judge determines would be a reasonable attorney fee if the plaintiff PARTY had been represented by an attorney."~~

~~**Section 9.** Section 2-4-102, MCA, is amended to read:~~

~~"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:~~

~~(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.~~

~~(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:~~

~~(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of Montana ARM and the Montana Administrative Register register;~~

~~(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;~~

~~(iii) the board of regents and the Montana university system;~~

~~(iv) the financing, construction, and maintenance of public works.~~

~~(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.~~

~~(3) "Agency action" means the whole or a part of, or the equivalent or denial of, the adoption of an agency rule, the issuance of a license or order, the award of a contract, or an agency decision that is of significant interest to the public.~~

~~(3)(4) "ARM" means the Administrative Rules of Montana.~~

~~(4)(5) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.~~

~~(6) "Interested person" means a person known to the committee or to an agency to have WHO HAS demonstrated in any way TO THE AGENCY an interest concerning agency actions or other agency administrative matters AND HAS REQUESTED TO BE PLACED ON THE AGENCY'S LIST OF INTERESTED PERSONS.~~

~~(5)(7) "License" includes the whole or part of any an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.~~

~~(6)(8) "Licensing" includes any an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.~~

~~(7)(9) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing in this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.~~

~~(8)(10) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.~~

~~(9)(11) "Register" means the Montana Administrative Register.~~

~~(10)(12) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:~~

~~(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;~~

~~(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;~~

~~(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;~~

~~(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;~~

~~(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;~~

~~(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana ARM.~~

~~(13) "Significant interest to the public", when used in reference to agency action, means agency action that involves a controversial matter THAT THE AGENCY KNOWS TO BE CONTROVERSIAL, a SIGNIFICANT fiscal impact on a particular class or group of individuals, or significant citizen interest.~~

~~(11)(14) "Substantive rules" are either:~~

~~(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or~~

~~(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."~~

~~**Section 10.** Section 2-4-302, MCA, is amended to read:~~

~~**"2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any a rule, the agency shall give written notice of its intended action. The notice shall must, at a minimum, include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon on the intended action. To promote the public's full comprehension of the notice, the notice must be written in plain and clear English and use familiar and understandable words and terms.~~

~~(2) (a) The notice shall must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 2 days of publication to interested persons who have made timely requests to the agency for notice of its rulemaking proceedings to be informed of agency actions and to the office of any professional, trade, or industrial society or organization or member thereof which of those entities that has filed a request with the administrative code committee when such request that has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons AND THE SUBJECT OR SUBJECTS IN WHICH EACH PERSON ON THE LIST IS INTERESTED. A person who submits an oral or written comment, attends a hearing, or contacts an agency by any means and for any purpose in regard to intended PROPOSED agency action must be informed of the list by the agency.~~

~~(b) The administrative code committee shall forward a list of all organizations or interested persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the Montana Administrative Register (ARM). The list must be amended by the agency upon request of any interested person requesting to be added to or deleted from the list.~~

~~(c) The notice shall must be published and mailed at least 30 days in advance of the agency's intended action. If the intended action is of significant interest to the public, the notice must, at a minimum, be published as required in 2-3-104(3).~~

~~(3) If any a statute provides for a different method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained herein in this section. However, in no case may the notice period may not be less than 30 days or more than 6 months.~~

~~(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing shall must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected.~~

~~(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein in this section alters that requirement.~~

~~(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.~~

~~(7) At the commencement of any a hearing on the intended action, the person designated by the agency to preside at the hearing shall:~~

~~(a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register;~~

~~(b) explain the primary function and purpose of the administrative code committee and state how the administrative code committee may be contacted; and~~

~~(c) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.~~"

SECTION 1. SECTION 2-4-102, MCA, IS AMENDED TO READ:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ~~Administrative Rules of Montana~~ ARM and the ~~Montana Administrative Register~~ register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice. The term does not extend to contested cases.

~~(5)~~(6) "License" includes the whole or part of ~~any~~ an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

~~(6)~~(7) "Licensing" includes ~~any~~ an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

~~(7)~~(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but ~~nothing in~~ this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

~~(8)~~(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

1 ~~(9)~~(10) "Register" means the Montana Administrative Register.

2 ~~(10)~~(11) "Rule" means each agency regulation, standard, or statement of general applicability that
3 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
4 requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

5 (a) statements concerning only the internal management of an agency and not affecting private
6 rights or procedures available to the public;

7 (b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

8 (c) rules relating to the use of public works, facilities, streets, and highways when the substance
9 of the rules is indicated to the public by means of signs or signals;

10 (d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
11 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially
12 relating to the seasonal recreational use of lands and waters owned or controlled by the state when the
13 substance of the rules is indicated to the public by means of signs or signals;

14 (e) rules implementing the state personnel classification plan, the state wage and salary plan, or
15 the statewide budgeting and accounting system;

16 (f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
17 accordance with 2-4-306 and must be published in the ~~Administrative Rules of Montana~~ ARM.

18 (12) "Significant interest to the public" means agency actions under this chapter regarding matters
19 that the agency knows to be of widespread citizen interest. These matters include issues involving a
20 substantial fiscal impact to or controversy involving a particular class or group of individuals. The term
21 does not extend to contested cases.

22 ~~(11)~~(13) "Substantive rules" are either:

23 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated
24 authority to promulgate rules to implement a statute have the force of law and when not so adopted are
25 invalid; or

26 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
27 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of
28 law."

29

30 **SECTION 2. SECTION 2-4-302, MCA, IS AMENDED TO READ:**

"**2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice ~~shall~~ must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ on the intended action. The rationale must be written in plain, easily understood language.

(2) (a) The notice ~~shall~~ must be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed within 3 days of publication to interested persons who have made timely requests to the agency ~~for notice~~ to be informed of its rulemaking proceedings and to the office of any professional, trade, or industrial society or organization or member ~~thereof which~~ of those entities that has filed a request with the administrative code committee ~~when such request~~ that has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ ARM. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice ~~shall~~ must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a) of this section, the agency shall post the notice of the state electronic bulletin board or other electronic communications system available to the public.

(3) If ~~any~~ a statute provides for a ~~different~~ method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ in this section. However, ~~in no case may~~ the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested

1 persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views,
2 or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must
3 state that opportunity for oral hearing ~~shall~~ must be granted if requested by either 10% or 25, whichever
4 is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision
5 or agency, by the administrative code committee, or by an association having not less than 25 members
6 who will be directly affected. If the proposed rulemaking involves matters of significant interest to the
7 public, the agency shall schedule an oral hearing.
8 (5) An agency may continue a hearing date for cause. In the discretion of the agency, contested
9 case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise
10 required by statute, nothing ~~herein~~ in this section alters that requirement.
11 (6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and
12 the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be
13 considered a new proposal for purposes of compliance with this chapter.
14 (7) At the commencement of any hearing on the intended action, the person designated by the
15 agency to preside at the hearing shall:
16 (a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register;
17 and
18 (b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an
19 opportunity to place their names on the list."
20
21 **Section 3.** Section 2-4-303, MCA, is amended to read:
22 "**2-4-303. Emergency or temporary rules.** (1) If an agency finds that an imminent peril to the public
23 health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing
24 its reasons for that finding, it may proceed upon special notice filed with the committee, without prior
25 notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an
26 emergency rule. The rule may be effective for a period not longer than 120 days, after which a new
27 emergency rule with the same or substantially the same text may not be adopted, but the adoption of an
28 identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power
29 precludes the people's constitutional right to prior notice and participation in the operations of their
30 government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against

abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to ~~immediate~~ judicial review ~~upon petition by any person~~ UPON PETITION BY ANY PERSON. THE MATTER MUST BE SET FOR HEARING AT THE EARLIEST POSSIBLE TIME AND TAKES PRECEDENCE OVER ALL OTHER MATTERS EXCEPT OLDER MATTERS OF THE SAME CHARACTER. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective."

~~Section 12. Section 2-4-305, MCA, is amended to read:~~

~~"2-4-305. Requisites for validity -- authority and statement of reasons. (1) The agency shall fully consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise CONCISE statement of the principal reasons for and against its adoption, comprehensively incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana Administrative Register register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.~~

~~(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the~~

~~language.~~

~~(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement.~~

~~(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.~~

~~(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.~~

~~(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule adopted is not valid or effective unless it is:~~

~~(a) consistent and not in conflict with the statute; and~~

~~(b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.~~

~~(7) A rule is not valid unless notice of it is given and it is adopted, in substantial compliance with 2-4-302 or 2-4-303 and this section, and unless 2-4-306 is complied with and notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.~~

~~(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in statements of reasonable necessity, in citations of authority for rules, and in citations of sections implemented by rules. An agency may use an amended proposal notice, but not the adoption notice, to correct deficiencies in a statement of reasonable necessity."~~

SECTION 4. SECTION 2-4-305, MCA, IS AMENDED TO READ:

1 "2-4-305. **Requisites for validity -- authority and statement of reasons.** (1) The agency shall fully
2 consider ~~fully~~ written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency
3 shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the
4 statement the reasons for overruling the considerations urged against its adoption. If substantial differences
5 exist between the rule as proposed and as adopted and the differences have not been described or set forth
6 in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ register, the differences
7 must be described in the statement of reasons for and against agency action. When written or oral
8 submissions have not been received, an agency may omit the statement of reasons.
9 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to
10 statutory language in order to convey the meaning of a rule interpreting the language, the reference must
11 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the
12 language.
13 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking
14 authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and
15 adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that
16 the rule purports to implement.
17 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a
18 governing board or commission must include a citation to and description of the policy implemented. Each
19 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise
20 comply with the requisites for validity of rules established by this chapter.
21 (5) To be effective, each substantive rule adopted must be within the scope of authority conferred
22 and in accordance with standards prescribed by other provisions of law.
23 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
24 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule
25 adopted is not valid or effective unless it is:
26 (a) consistent and not in conflict with the statute; and
27 (b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of
28 subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking
29 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
30 considered by the agency.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, ~~or~~ 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in ~~statements of reasonable necessity, in~~ citations of authority for rules, and in citations of sections implemented by rules. An agency may use an amended proposal notice, but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity."

Section 5. Section 2-4-306, MCA, is amended to read:

"**2-4-306. Filing, format, and effective date -- dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules ~~which~~ that are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance ~~therewith~~ with this chapter. ~~He~~ The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, which ~~shall~~ must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing ~~such~~ copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with 5-18-109, the results of the poll ~~shall~~ must be published with the rule.

(4) Each rule ~~shall become~~ becomes effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

1 (ii) an emergency rule ~~shall become~~ becomes effective ~~immediately upon filing with the secretary~~
2 ~~of state or~~ at a stated date following publication in the register or immediately upon filing with the secretary
3 of state if the agency finds that this effective date is necessary because of imminent peril to the public
4 health, safety, or welfare. The agency's finding and a brief statement of reasons ~~therefor shall~~ for the
5 finding must be filed with the rule. The agency shall, in addition to the required publication in the register,
6 take appropriate and extraordinary measures to make emergency rules known to every person who may
7 be affected by them."
8 -END-